

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

- - -

IN RE: AUTOMOTIVE WIRE HARNESS
SYSTEMS ANTITRUST

Case No. 12-md-02311

MDL NO. 2311

Hon. Marianne O. Battani

INITIAL STATUS CONFERENCE

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Friday, March 16, 2012

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1	<u>TABLE OF CONTENTS</u>	
2		<u>Page</u>
3	<u>OATH OF ADMISSION administered.....</u>	16
4	<u>APPOINTMENT OF INTERIM LEAD AND LIAISON COUNSEL</u>	
5	Direct Purchaser Plaintiffs by Mr. Kanner.....	38
6	Dealership Plaintiffs by Mr. Barrett.....	53
7	End-Payor Plaintiffs by Mr. Becnel.....	60
8	End-Payor Plaintiffs by Mr. Strange.....	68
9	End-Payor Plaintiffs by Ms. Salzman.....	80
10		
11	<u>CASE MANAGEMENT ORDER DISCUSSION.....</u>	82
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 Detroit, Michigan

2 Friday, March 16, 2012

3 at about 10:07 a.m.

4 — — —

5 (Court, Counsel and parties present.)

6 THE CASE MANAGER: All rise.

7 The United States District Court for the Eastern

8 District of Michigan is now in session, the Honorable

9 Marianne O. Battani presiding.

10 You may be seated.

11 THE COURT: Good morning. It looks like we are

12 having a party here.

13 Okay. I'm sorry about the heat. There is nothing
14 we can do about it, so I don't know that there is anyplace
15 much cooler. We did reserve another room in case but I think
16 we are going to stay here and bear with it.

17 Let me introduce myself. My name is
18 Marianne Battani and I am the Judge who has had the great
19 fortune of being assigned this case.

20 I just want to say to begin with, I know some of
21 you were a little excited because I set this meeting I guess
22 early, only I was too ignorant of this to know that it was
23 early, but even if I had known that it was too early I would
24 do the same thing because I don't like to have cases,
25 especially cases of a significant magnitude like this that

1 involves so many people and so many attorneys involved,
2 without really knowing about them. So when I sent you the
3 notice of this and say I wanted to get a lay of the land, I
4 really do. I want to know a little bit more than what your
5 pleadings tell me about what this case is about, and that
6 that truly is the intention today. I know we have in Court
7 maybe more important issues in educating me like appointment
8 of counsel, and we will get to that shortly.

9 We have gotten your appearances. However we, of
10 course, still don't know who most of you are, so when you
11 speak I'm going to ask that you identify yourself for
12 purposes of the record. And I am having this on the record
13 just so I will have complete notes of what happened today.
14 Obviously if and when we get to motions they, of course, will
15 have to be on the record.

16 So I welcome all of you and I hope to make this an
17 informative meeting. We will proceed as quickly as we can
18 and as efficiently as we can but consistent with justice so
19 everybody does have an opportunity to tell me what their
20 story is.

21 Okay. Let me begin by introducing to you people
22 that you will get to know. We do have a magistrate judge
23 assigned to this case, her name is Mona Majzoub. She is not
24 here, she happens to be on duty today, so she may come in at
25 some point and I will introduce her just so you will see her.

1 At this point I don't even know that I'm going to use her,
2 but she is assigned to this case.

3 Of course, sitting in front of me is
4 Bernadette Thebolt, and I think most of you have if not
5 already talked to her know that she is my case manager, and
6 will be the court clerk in charge of this case so that when
7 we work out the filings and the pleadings, et cetera, Bernie
8 will keep track of that.

9 Then my court reporter, Rob Smith, will be taking
10 down what is taking place here today. I don't anticipate
11 that we will order a transcript, but I will get some notes
12 off of his notes, so that's what we are doing.

13 And then I have my two law clerks, in front is
14 Eric Westenberg and to my far right is Molly Roehrig, and
15 they will be working with me on this matter.

16 The first issue is the oath of admission. I'm
17 sorry, I know a lot of you got excited about this because you
18 didn't have certificates of good standing, et cetera. You
19 only need to be admitted if you are going to argue a motion
20 today. You only need to be admitted, in fact, if you are
21 coming here to argue a motion. We do not have pro hoc vice
22 in this district so you have to, as you most likely know
23 already, become members and then you will be welcome to come
24 here and argue any case.

25 All right. For those of you, I have the

1 certificates and I will have Bernie give you these later,
2 but, if you will if, you are being admitted please stand up,
3 those of you, all right, and if you would please raise your
4 right hand.

5 Do you solemnly swear that you will conduct
6 yourself as an attorney and counselor of this Court with
7 integrity and respect for the law, and that you have read and
8 will abide by the Civility Principles approved by this Court,
9 and that you will support and defend the Constitution and
10 laws of the United States?

11 ATTORNEYS BEING SWORN: (Collectively) I do.

12 THE COURT: And do you so declare under the penalty
13 of perjury that the foregoing is true and correct?

14 ATTORNEYS BEING SWORN: (Collectively) I do.

15 THE COURT: Okay. Thank you. You are admitted and
16 you will be able to pick up your certificates from Bernie.

17 (The following attorneys were administered the
18 Oath of Admission:

19 Douglas A. Abrahams, Daniel E. Becnel,

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1 Bernard Persky, Hollis L. Salzman,
2 William Parker Sanders, Howard Sedran,
3 Brian R. Strange, Karen D. Stringer,
4 Steven M. Toprani, Michael Frederick Tubach,
5 Randall B. Weill and Steven N. Williams.)

6 THE COURT: Let me stress, although after reading
7 the applications for lead attorneys I don't think this is
8 something that I have to say for you, it might be preaching
9 to the choir, but I do want to say that we do have Rules of
10 Civility and Principles of Civility and we do follow that. I
11 think that in this Court really I have never had a problem,
12 and I would anticipate the same thing here that everybody
13 will act professionally with due regard and respect for each
14 other.

15 The first issue I would like to address is the
16 organization of the cases, the direct purchaser, indirect
17 purchaser organization. Do you want to address that,
18 Mr. Fink?

19 MR. FINK: Well, Your Honor --

20 THE COURT: If you would give your name and go to
21 the podium, please.

22 I called on Mr. Fink because he was the first to
23 file an application for lead counsel and liaison counsel, he
24 filed it ex-parte and I did not sign it ex-parte, but I will
25 hear you today. Go ahead.

1 MR. FINK: Thank you, Your Honor. I'm going to be
2 very brief because I'm actually going to introduce someone
3 else, but I did want to introduce to the Court the attorneys
4 who would be taking the lead -- or propose to take the lead
5 on behalf of the direct purchase plaintiffs, and that's
6 Greg Hansel, Steve Kanner, Gene Spector and Joe Kohn.

7 THE COURT: Wait a minute. Greg Hansel. Okay.
8 And?

9 MR. FINK: Steve Kanner.

10 THE COURT: Steve Kanner.

11 MR. FINK: Joe Kohn and Eugene Spector.

12 THE COURT: Okay.

13 MR. FINK: Your Honor, I know the Court has seen
14 the papers and I'm not going to argue that motion except to
15 say that the Court already obviously knows the tremendous
16 depth of experience that these attorneys have. And I would
17 add this --

18 THE COURT: Wait a minute before we get into the
19 applications, I'm not quite there yet. I want you to tell me
20 because you filed as liaison as the direct purchasers,
21 obviously you decided that there would be -- or you all kind
22 of came to the conclusion about the direct and indirect and
23 how these categories are separate, but I would like to know
24 from you because I don't know, as I read some pleadings I
25 hear about the OEMs being the direct purchasers and having

1 direct contracts, and then you talk about other arrangements,
2 so I would like to know who are the direct purchasers?

3 MR. FINK: Well, every plaintiff who we have filed
4 on behalf of -- who the direct purchasers have filed on
5 behalf of, every one of those plaintiffs have purchased wire
6 harnesses directly from one of the named defendants -- at
7 least one of the name defendants and in substantial volumes.
8 The OEMs also purchased the direct -- purchased directly from
9 the defendants, and may well -- they are members of the class
10 that we propose, and they may well choose to stay in the
11 class. We don't know that they will stay in, but they are
12 direct purchasers.

13 THE COURT: So they would be members of the class
14 that you propose?

15 MR. FINK: That's correct, Your Honor.

16 THE COURT: And how many people are members of the
17 class you propose? How many, excuse me, companies do you
18 anticipate?

19 MR. FINK: We think in the neighborhood of 1,000.

20 THE COURT: In the neighborhood of thousands?

21 MR. FINK: 1,000, roughly 1,000, several hundreds
22 to 1,000. We don't know the exact numbers and we won't until
23 the end.

24 THE COURT: I understand. All right. Before we go
25 to the applications -- you may be seated -- I would like to

1 hear from somebody from the dealerships. Let's see,
2 Mr. Cuneo, are you here? All right. Why don't you come up.

3 MR. FINK: Your Honor, as he's coming up, let me
4 just say if this is the jury we are prepared to dismiss this
5 case.

6 THE COURT: That would be interesting, wouldn't it?
7 Okay.

8 MR. CUNEO: Good morning, Your Honor.
9 Jonathan Cuneo, and I want to start by reading you your
10 rights, and that is that I have not yet been admitted. I
11 have the application in my hand. I am a member in --

12 THE COURT: That's all right, you're not doing a
13 motion right now. All I want for you to do because I know
14 you filed an application for lead co-counsel, I want you to
15 tell me a little bit about the dealership class.

16 MR. CUNEO: Well, the dealership class are -- is a
17 class of indirect purchasers in those states in the
18 United States that have passed state legislation to overrule
19 or to create a private cause of action for indirect
20 purchasers. As the Court is doubtless aware under federal
21 law the Illinois Brick decision says that the exclusive
22 federal right belongs to direct purchasers.

23 So we in our group all represent dealers from
24 various states and the District of Columbia across the
25 country, and we have put together basically a leadership

1 team -- or a proposed leadership team of three law firms, I'm
2 not making the motion now, but in any event we have been
3 working together harmoniously, we each bring something
4 different, slightly different, to the table, and we have been
5 able to coordinate ourselves sufficiently so that there are
6 only three of us in the courtroom.

7 And in any event, we -- the dealers, of course,
8 have a very substantial interest in the outcome of this
9 litigation. Our complaints charge that they suffered
10 tremendous as yet unknown amounts of damages as a result.

11 THE COURT: Is there some amount of damages they
12 suffered that they have not passed on to the end-payor
13 plaintiffs?

14 MR. CUNEO: Yes, there is.

15 THE COURT: What would that be?

16 MR. CUNEO: Well, we are working on getting a
17 figure, but we have retained an economist, we are giving that
18 economist figures, but the preliminary conclusions of that
19 economist are that we have a definite percentage of recovery.
20 I'm hesitant to say exactly what the percentage is because if
21 there is a variation at the end then I don't want to be stuck
22 with something that I had said but it is a sizeable
23 percentage of the overage.

24 THE COURT: And tell me in your class how many
25 dealerships are you talking about? I heard a number of

1 20,000. I don't know if that's --

2 MR. CUNEO: I'm sorry, I missed the last --

3 THE COURT: I heard like 20,000 or something. Was
4 that from your papers or --

5 MR. CUNEO: If it was in my papers I don't remember
6 that, and I don't know that we have measured it but it is in
7 the thousands, there is no question about it, it is in the
8 thousands.

9 THE COURT: Okay. All right. Thank you.

10 MR. CUNEO: Thank you.

11 THE COURT: Mr. Becnel, could you tell us a little
12 bit about the end-payors?

13 MR. BECNEL: Yes.

14 THE COURT: I'm most anxious at first to know --
15 let me have you put your appearance on the record.

16 MR. BECNEL: Daniel E. Becnel, Jr. from Louisiana.

17 THE COURT: Okay. I'm most interested in knowing
18 how many or what the size is -- proposed size of your class
19 is?

20 MR. BECNEL: Probably millions.

21 THE COURT: Millions?

22 MR. BECNEL: Yeah. It is anybody who bought one of
23 these cars that ultimately wound up dealing with the issue
24 and paying for the issue, and when you do a class notice you
25 are going to find out, you know, no matter what the case is,

1 whether it is a product liability case, whether it is an
2 antitrust case, they just come out of the woodwork, and
3 nobody really has been able to measure that, but it is going
4 to be tens of thousands, hundreds of thousands and maybe tens
5 of millions.

6 THE COURT: Do you agree that the indirect
7 purchasers should be divided into these proposed classes of
8 dealerships and end-payors?

9 MR. BECNEL: Not only that but you are going to
10 have at some future hearings additional cases with additional
11 products, and I would urge this Court to accept from the MDL
12 Panel, should Judge Heyburn call you, the rest of them
13 because they all consolidated basically with similar issues,
14 but those have not been argued and we will have arguments on
15 some of those cases at the hearing in San Diego at the end of
16 the month, but there is big-time precedent for that and the
17 precedent is just the last time we were arguing MDL cases
18 Judge Goodwin, who is from West Virginia, wound up in the
19 vaginal mesh cases getting three gigantic classes of people
20 who had this vaginal mesh problem that failed.

21 So I wanted to take this opportunity to urge you
22 to, first, take those additional cases, and to -- because we
23 have found just because of the BP case that just went through
24 multiple states with millions of people filing claims, and
25 with a fabulous special master appointed by the President and

1 BP, we have settled 225,000 cases for \$6.2 billion, and I
2 would urge that now Mr. Feinberg is no longer doing that that
3 the Court consider him for a special master to get all of
4 these --

5 THE COURT: We will get there, but I will jump
6 ahead here to the next item on other related cases because
7 you have addressed these other MDLs. We looked up the
8 briefing schedule, which I think we had on the agenda
9 sometime in March is what -- it is March, so by now maybe all
10 the briefing is done on those but it doesn't look like it is
11 scheduled until --

12 MR. BECNEL: The following one, I wanted to say
13 this one, the one after -- and they have it charted out,
14 Judge Heyburn has it charted out, it is probably not
15 San Diego, I don't know.

16 UNIDENTIFIED PERSON: Washington, D.C.

17 MR. BECNEL: Washington, D.C. is the one --

18 THE COURT: And that would be the end of May?

19 MR. BECNEL: Yes, about every six weeks.

20 THE COURT: Okay. So we have some time before we
21 know that. Tell me this, those three other MDLs that I'm
22 aware of, the instrument panel, the fuel sender and the
23 heater control panel, those are the three MDLs that we are
24 looking at, are the proposed plaintiff classes the same?

25 MR. BECNEL: Well, they basically are. And the

1 same group of lawyers are probably going to have I would say
2 98 percent of those cases, so it doesn't make a lot of sense
3 to take those three additional cases and divide them up
4 either in this district or send them to various places
5 because the learning curve of a federal judge in an
6 automotive case, you've got to learn it in these direct,
7 indirect and dealer cases, and you just as well handle the
8 others because it is by and large similar type problems.

9 THE COURT: All right. Let me ask you, we put this
10 on, we are not aware of any state court actions but is
11 anybody?

12 (No response.)

13 THE COURT: No?

14 MR. BECNEL: No.

15 THE COURT: Okay. Thank you very much.

16 MR. BECNEL: Thank you.

17 THE COURT: All right. What about the effect --
18 Ms. Salzman, are you here? What about the effect of the
19 pending criminal investigations and also the Lear bankruptcy
20 here, how do you at this very early stage see this?

21 MS. SALZMAN: Well, so far the government
22 investigation, the Department of Justice has not sought to
23 intervene in this action or make any motions in this action
24 or appear at this hearing, so it is unclear at this point
25 what action they will take, if any, and I would venture to

1 guess that we will perhaps not see them appear until down the
2 road when the plaintiffs start seeking discovery from the
3 defendants.

4 THE COURT: Okay. And before I forget, would you
5 put your appearance on the record?

6 MS. SALZMAN: Certainly. Hollis Salzman,
7 Labaton Sucharow.

8 THE COURT: So is it something that is anticipated
9 will happen, and I'm thinking will that in the future delay
10 discovery, et cetera?

11 MS. SALZMAN: I certainly think that the Department
12 of Justice will make its presence known if they think that it
13 is necessary in a particular case. I don't want to speak for
14 the government, but I have seen in many of my other antitrust
15 cases where there is also a pending government action that
16 when the government is interested in the case they are
17 looking at it and they will let the court know immediately if
18 they determine it is necessary to make their appearance in
19 the private action.

20 THE COURT: Okay. Thank you.

21 Mr. Fink?

22 MR. FINK: Your Honor, if I may, Mr. Spector has
23 been in contact with the government and he has something to
24 offer on that.

25 THE COURT: Okay. Thank you.

1 MS. SALZMAN: Thank you, Your Honor.

2 THE COURT: Mr. Spector?

3 MR. SPECTOR: Good morning, Your Honor.

4 Eugene Spector on behalf of the direct purchase plaintiffs.
5 My office has been in contact with the Department of Justice
6 with regard to this case. We made sure that they got a copy
7 of your order scheduling the status conference. We have
8 spoken to them. They are obviously not here today. We told
9 them that we would keep them advised of any progress in the
10 litigation and where coordination would be necessary to let
11 them know about it and work with it. So as Ms. Salzman said,
12 right now with no depositions scheduled of any of the
13 potential witnesses it is not likely that the government is
14 going to see this as any interferences with the criminal
15 case.

16 THE COURT: Okay. Thank you very much.

17 MR. SPECTOR: Thank you, Your Honor.

18 THE COURT: And on the Lear bankruptcy, would you
19 put your appearance on the record, please?

20 MS. McEVOY: Your Honor, Julie McEvoy for
21 Defendant Yazaki North America, Inc.

22 THE COURT: All right.

23 MS. McEVOY: And I have been designated as the
24 spokesperson for this respectable group of lawyers today, not
25 because our clients are similarly situated but for ease of

1 administration for the Court. And forgive me for jumping up,
2 but the defendants did want to be heard on a couple of these
3 topics before we get too much further.

4 THE COURT: Right. You can stay right there, but
5 let me hear --

6 MR. PERSKY: Yes. My name is Bernard Persky of the
7 Labaton Sucharow firm, one of the proposed interim co-lead
8 counsel for the end-payor plaintiffs.

9 We had argued the opposition to Lear's bankruptcy
10 motion, and we argued it on behalf of all of the end-payor
11 plaintiffs and --

12 THE COURT: Okay. You were who I was going to call
13 on to address that also. I read that in your papers. Could
14 you tell me a little bit more about it and how it will
15 effect --

16 MR. PERSKY: Yes, and Mr. Marovitz, who represents
17 Lear, may chime in if I leave anything out.

18 THE COURT: Okay. Let's get appearances first.

19 MR. MAROVITZ: Good morning, Your Honor. I'm
20 Andy Marovitz from Mayer Brown and I represent
21 Lear Corporation.

22 THE COURT: Okay.

23 MR. PERSKY: So Lear had emerged from bankruptcy
24 and had an effective date of discharge of November 9, 2009.

25 THE COURT: Wait a minute. Are you having trouble

1 hearing in the back? We have fans going, so let's -- I will
2 put the microphone on a little louder and speak into it.

3 MR. PERSKY: Sorry.

4 THE COURT: And speak into it.

5 MR. PERSKY: Lear Corporation had been in
6 bankruptcy and emerged therefrom on November 9, 2009, which
7 was the effective date of discharge of whatever claims were
8 discharged. After they learned of numerous antitrust claims
9 that were asserted against Lear Corporation and other
10 defendants Lear went back to the bankruptcy court in the
11 Southern District of New York before Bankruptcy Judge Gropper
12 and made a motion to stay all of the antitrust cases against
13 them by reason of their alleged discharge in bankruptcy.

14 They made such a motion, we responded to that
15 motion, briefed the motion and argued before Judge Gropper,
16 and he issued an order in which he agreed that claims through
17 the date of the discharge were discharged, the effective date
18 were discharged, however, he agreed with plaintiffs' position
19 that if and until the extent that Lear Corporation from and
20 after the effective date of the bankruptcy committed any
21 post-effective date antitrust violations we would be allowed
22 to amend our complaint in the antitrust court and assert
23 post-effective date antitrust violations, and the amount of
24 liability with respect to such violations would be measured
25 by the antitrust court and could extend from and after the

1 date they rejoined the conspiracy and under, we say,
2 established principles of antitrust law and conspiracy law,
3 once you join a conspiracy you are jointly and severally
4 liable for all of the damages from the beginning of the
5 conspiracy until the conspiracy's termination.

6 That order has been entered by Judge Gropper. Lear
7 has appealed from that order and such an appeal would go to
8 the district judge when the district judge is assigned.
9 Currently we are specifying the record on appeal. They have
10 specified the record, and by next Friday we will specify some
11 additional items for the appeal. Once all of that is
12 submitted to the court the district judge will establish a
13 briefing schedule, Lear will file its brief in 14 days
14 thereafter, we will file our brief, but currently there is no
15 effect we say on the proceeding because we are permitted to
16 move forward, we are permitted to amend our complaint and to
17 assert post-effective date antitrust violations.

18 THE COURT: All right. Thank you.

19 Lear?

20 MR. MAROVITZ: Again, Your Honor, Andy Marovitz for
21 Lear Corporation.

22 It is certainly the case that claims that arose
23 prior to November 9th, 2009 have been discharged, and I agree
24 with Mr. Persky to the extent that what he's told you is that
25 essentially the bankruptcy court has decided that this Court

1 is in a position to decide whether or not post-discharge
2 conduct can somehow allow for liability as to Lear. It
3 really has asked Your Honor to make that decision.

4 Kirkland & Ellis represents Lear Corporation in the
5 bankruptcy court. They have appealed, as Mr. Persky pointed
6 out. We anticipate just in terms of the timing of the
7 appeal, and there is no briefing schedule set yet, but we
8 anticipate that the Lear brief to the District Court in the
9 Southern District of New York would be due some time in
10 April, that plaintiffs' brief probably some time in May, that
11 Lear's reply some time in May and then the district court
12 would obviously issue its decision on the appeal several
13 months down the road, no one knows exactly when.

14 THE COURT: All right. But it appears now that
15 that would not interfere with proceeding, as Mr. Persky
16 indicated?

17 MR. MAROVITZ: Right. We are certainly prepared to
18 make the arguments to this Court that the bankruptcy judge
19 suggested that we make to Your Honor that are antitrust
20 arguments as opposed to bankruptcy arguments. The
21 preliminary question of whether or not bankruptcy law bars
22 all of these claims will be decided by the appeal from the
23 bankruptcy judge's order.

24 THE COURT: Right. Okay. Thank you.

25 MR. PERKSY: This is Mr. Persky again.

1 What we would be arguing is there would have been
2 conduct post the effective date of the discharge by the
3 Lear Corporation which would have rendered them liable under
4 the antitrust lawsuits.

5 THE COURT: From the beginning?

6 MR. PERSKY: Well, that would be one of our
7 arguments. One argument would be they are liable from and
8 after the date they joined the conspiracy, but we say that is
9 not conspiracy law. We would argue once we establish their
10 liability, the scope of that liability is to be determined by
11 Your Honor, the antitrust judge, and we would respectfully
12 suggest that if we can establish liability post-effective
13 date the dollar amount of that liability would be joint and
14 several liability for the damages caused by all of the
15 members of the conspiracy from the beginning of the
16 conspiracy to its termination.

17 MR. MAROVITZ: Your Honor, if I could just respond,
18 we absolutely disagree with that. Obviously we --

19 THE COURT: See, they are not even arguing motions
20 and they can't stop.

21 MR. MAROVITZ: That's right. There's a very good
22 Sixth Circuit case, Travel Agents, which we will get to at
23 the right time.

24 THE COURT: I like that you are talking about
25 conspiracy because right now we have a month-long conspiracy

1 criminal trial going with drugs and guns and fires and
2 killings and it is nasty, so I look forward to your type of
3 conspiracy.

4 MR. PERSKY: As do we, Your Honor.

5 MR. MAROVITZ: Your Honor, alleged conspiracy.

6 THE COURT: Okay.

7 MR. GALLO: Good morning, Your Honor. Ken Gallo
8 from Paul, Weiss. I represent Delphi.

9 THE COURT: Okay.

10 MR. GALLO: I wanted to make a couple of points
11 because Delphi is uniquely situated with respect to both the
12 bankruptcy issues and is situated somewhat differently than
13 some of the other defendants with respect to the impact of
14 the criminal proceedings that you have asked about, so there
15 are just four points that I wanted to make about this.

16 One is Delphi also came out of bankruptcy in
17 October of 2009. Delphi is, in fact, going to file a motion
18 in the bankruptcy court once the consolidated amended
19 complaint has been filed here. We have reached just a
20 different judgment than Lear about when it made sense to go
21 to the bankruptcy court. We thought it made sense to wait
22 until there was a controlling pleading here. We are going to
23 go to the bankruptcy because under the Delphi bankruptcy plan
24 we believe that the plaintiffs should not be proceeding in
25 this Court against Delphi. Delphi was an asset purchase and

1 the bankruptcy -- the modified bankruptcy plan that come out
2 as a result of the Delphi purchase expressly said that
3 antitrust claims are gone, they are not carried forward to
4 the new Delphi corporation, that successor liability is not
5 carried forward, so we are going to be like Lear proceeding
6 in the bankruptcy court.

7 We certainly don't want to hold things up here, and
8 if the Court thinks we should go there more quickly we could.
9 Our bankruptcy counsel advised that it made sense to wait,
10 and we are in front of a different -- we have a different
11 bankruptcy judge and we should do it once there is an
12 actionable consolidated amended complaint here.

13 So Delphi has the same issue as Lear, although the
14 legal issue may be slightly different we think we have even a
15 more compelling argument than Lear, but I just wanted you to
16 know that issue is coming.

17 THE COURT: Thank you.

18 MR. GALLO: Second, with respect to the scope of
19 the criminal investigation and its impact on this case, we
20 feel it is very important to let the Court know that while a
21 few defendants have pled guilty, Delphi and certainly other
22 defendants have not pled guilty. We don't believe we have
23 done a doggone thing wrong and no federal agency, the
24 Department of Justice or anybody else, has suggested to us
25 that we have. So we don't think we belong in this case.

1 The complaints that have been filed against Delphi,
2 the allegations that are specific to Delphi are extremely
3 conclusory. There are no factual allegations, and we intend
4 at the appropriate time to file a motion to dismiss under
5 Twombly and the controlling law because we think if the
6 consolidated amended complaint looks like the 50-something
7 complaints that have been filed so far we don't think there
8 are any actionable allegations against Delphi. So we have
9 both the bankruptcy issue and the pleading issue, and we
10 don't want to be treated with a broad brush that we've pled
11 guilty or done anything wrong because respectfully we don't
12 believe we have and we don't believe the plaintiffs have any
13 support for the notion that we have.

14 Thank you, Your Honor.

15 THE COURT: But you wouldn't want to leave our
16 party, would you?

17 MR. GALLO: Well, I would be happy to be here but
18 Mr. Sherbin and Mr. Papelian, who are here, would love to
19 leave your party.

20 THE COURT: All right. So I thank you for bringing
21 that up because I see the motions that are going to be
22 coming, and they will be handled -- we will do the schedule
23 and once we get that case management order and all of those
24 things we'll have a schedule for those motions.

25 MR. GALLO: Thank you, Your Honor.

1 THE COURT: Thank you very much.

2 MR. MAROVITZ: Thank you.

3 THE COURT: Let me ask -- go ahead.

4 MS. McEVOY: Sorry, Your Honor. I'm persistent if
5 nothing else. Julie McEvoy for Yazaki North America, Inc.

6 Before we do move on I did just want to comment
7 briefly for the defendants generally on a couple of the
8 issues the Court has already addressed.

9 One follows nicely from the discussion that
10 Mr. Gallo just presented to the Court, and that is to the
11 fact of differently situated parties, and that's --

12 THE COURT: They are having a little trouble
13 hearing you so --

14 MS. McEVOY: Forgive me.

15 Mr. Gallo was speaking to the Court about the fact
16 of differently situated parties, and that's going to be a
17 recurring theme both today and throughout the case, and so I
18 particularly appreciated the Court's questions concerning
19 organizations of the cases, and defendants have no objection
20 to the organization of the cases as the plaintiffs have
21 proposed them, although, of course, we would take issue with
22 the specifics of class certification and other procedural
23 issues as we move down the pike.

24 I wanted to note that consolidation we believe is
25 appropriate of the wire harness cases that are presently

1 before the Court. It is clearly an administrative and
2 efficient device to bring like claims all together. Some of
3 us are defendants in the other MDL cases and it may well be
4 appropriate to talk about coordinating those cases, but we
5 would oppose consolidation of those claims into one big giant
6 mass before the Court, we wouldn't think that that would be
7 appropriate. So that is all the defendants wanted to add on
8 those issues, Your Honor. Thank you.

9 THE COURT: Thank you. All right. Before we
10 proceed I would like to introduce Magistrate Judge
11 Mona Majzoub who came in. Mona. Thank you.

12 She is very experienced and will be a great aid if
13 we use her. You may wonder why do I say use her because the
14 magistrate judges are quite overburdened here, and we are
15 going to be getting to how we are going to handle discovery
16 motions and the like so at this point, Magistrate Majzoub, I
17 don't want you to panic but we will work with you on this.
18 Thank you.

19 Is there anything that you want to bring up? I
20 know that you can't stay. You're more than welcome to stay,
21 but is there anything, Mona, that you want to say?

22 MAGISTRATE MAJZOUB: No, Judge, not at this time.

23 THE COURT: Okay. Thank you.

24 Let me ask, I know Ms. McEvoy spoke for defendants,
25 but are there other defendants who have any comments that

1 have not yet been expressed on any items discussed so far?

2 (No response.)

3 THE COURT: You make a wonderful jury. Okay.

4 Thank you.

5 All right. Our next issue, which I think is the
6 most difficult one for me today, is the application for lead
7 and liaison counsel for the various groups, but before we
8 even get to the applications, excuse my ignorance, but I
9 really don't know how many attorneys does it take to handle a
10 class? I mean, you know, how many lawyers does it take to
11 change a light bulb? I don't know, and we need to discuss
12 that. You want to address that?

13 MR. FINK: Your Honor, on this subject
14 Steven Kanner will speak with respect to the direct purchaser
15 plaintiffs, and I hope this part is not a difficult motion.

16 THE COURT: All right. Then direct plaintiffs, I
17 think as you all know, have filed one application consisting
18 of a number of attorneys.

19 MR. KANNER: Good morning, Your Honor.

20 THE COURT: Your appearance, please.

21 MR. KANNER: Good morning, Your Honor. My name is
22 Steve Kanner from the firm Freed, Kanner, London & Miller. I
23 represent multiple parties or direct purchasers in this case.

24 It is an honor to be here this morning, and I am
25 equally pleased to be able to tell you that within our

1 leadership structure of four co-lead counsel it is
2 uncontested, there are no objections, and we made the
3 judgment based on what we perceive to be the size and
4 complexity of this case and frankly the number of defendants,
5 the need to cooperate and coordinate with various classes of
6 indirect counsel, the need to work with various groups of
7 many of my friends here sitting in the jury box, although
8 that sounds odd to say.

9 THE COURT: Could you speak into the microphone?
10 I'm sorry. There is a fan right in the back, and I think
11 that's blocking your voice.

12 MR. KANNER: Certainly, Your Honor. Nobody has
13 every told me that I can't be heard.

14 The case does represent -- and I'm trying to get
15 directly to the issue of how many lawyers it takes not
16 necessarily to change a light bulb but to effectively and
17 efficiently prosecute this case with an idea of doing it in a
18 streamlined fashion, in a coordinated fashion and in a
19 fashion that facilitates the ease of this Court in making
20 decisions and determining what issues are on the agenda and
21 what needs to be heard when and who is going to present those
22 motions.

23 There are a number of cases today and historically
24 where four co-lead counsel have been approved by the courts.
25 There are --

1 THE COURT: Four co-lead individual counsel, four
2 co-lead firms?

3 MR. KANNER: Four co-lead firms.

4 THE COURT: Firms.

5 MR. KANNER: And there are reasons for that. In
6 fact --

7 THE COURT: You are aware in one of the classes
8 there's an issue of whether to appoint individuals versus
9 firms, and that's why -- maybe you're not aware of that but
10 there is, and I am asking you that question?

11 MR. KANNER: I understand that, Your Honor. Courts
12 have gone multiple ways, and typically focusing on the size
13 and complexity and logistics of the case. I'm not going to
14 speak for the indirect end-payor or the automobile dealers,
15 they can certainly amply speak for themselves. What I am
16 here to speak for -- the group I am here to speak for are the
17 thousands of direct purchasers. Within certain categories of
18 direct purchasers there are in excess of 3,500, and these are
19 folks who buy wire harness products.

20 And if I can backtrack a little bit, a wire harness
21 is composed of lots of different elements. There are the
22 cables, there are connectors, there are the pins, there's an
23 electronic control unit; it almost looks like an octopus with
24 one head and cables going out both ways. The wire harness
25 cables come with pins, connectors, and all of those parts are

1 sold into the stream of commerce. Our clients are direct
2 purchasers of some or all of those parts.

3 The case does represent logistical, tactical and
4 practical challenges to the direct purchasers. The
5 challenges we believe warrant four co-lead counsel as a team.
6 The order that we have included and which I will present to
7 Your Honor at the end of my comments is an order appointing
8 interim and liaison counsel for the direct purchaser classes.
9 It includes four firms. I am pleased to talk about the depth
10 and wealth of experience of these four firms and about my
11 colleagues seated at the bench whom Mr. Fink introduced to
12 the Court earlier.

13 I can tell this Court that within the firms that
14 appear here today and the attorneys representing these firms,
15 we have collectively tried approximately 15 antitrust cases
16 to verdict. We have represented plaintiffs as co-lead
17 counsel in literally dozens of major --

18 THE COURT: You have tried these to verdict? You
19 actually tried the cases?

20 MR. KANNER: Yes, we have, Your Honor.

21 THE COURT: That does not speak well for you.

22 MR. KANNER: Well, it spoke well for plaintiffs in
23 some cases and it didn't speak well for plaintiffs in other
24 cases. It is a rare event for an antitrust lawyer on the
25 plaintiff's side or on the defendant's side to say that they

1 have tried cases, antitrust cases typically don't go that
2 far, but we firmly believe to do our job we need to have that
3 experience, and the group seated before you has that
4 experience.

5 Just among the four counsel over here, personally,
6 not their firms, and I say this hesitantly, we have over
7 100 years of experience, and looking over the group some of
8 us have more experience than others. My firm and I
9 personally have been practicing this area of law almost
10 exclusively for 30 years, from the days of the government to
11 private practice this is what I do. I know I can say the
12 same for my colleagues seated over here. And as I said,
13 collectively we bring a wealth of knowledge and experience to
14 this case.

15 And it is our judgment, although our judgment is
16 secondary to your judgment, Your Honor, I recognize that,
17 that four is not only necessary but crucial. Even within the
18 period of time before we have appeared in front of this Court
19 we have all taken specific tasks and roles which would be
20 incredibly burdensome for one firm.

21 THE COURT: Could you give me examples?

22 MR. KANNER: Certainly, Your Honor. I happen to
23 have prepared a little chart for myself that identifies that.

24 THE COURT: Okay.

25 MR. KANNER: Two of the firms have principally

1 conducted the investigation, and I can tell Your Honor we
2 have been at this for over a year on the investigation phase.
3 We have industry consultants and experts, and one firm has
4 focused on that. Another firm has been dealing specifically
5 with the bankruptcy issues which, as you know from the
6 previous presentations, are significant in this case. We
7 have another firm that has been primarily working on putting
8 together the CMO, which Your Honor has, and which will be the
9 subject of some discussion. We have another firm that has
10 focused on service of process both domestically and using the
11 somewhat complex mechanism of the Hague Convention. Another
12 firm has focused specifically on briefing and pleadings, and
13 yet another firm has focused on the organizational aspects of
14 the case, keeping everyone on track, on time, creating
15 time-reporting mechanisms which we believe is critical for
16 Your Honor, and the maintenance of an assignment sheet where
17 no two law firms are duplicating time.

18 THE COURT: That's one of my concerns, of course,
19 because we will and I will have you address the issue of
20 attorney fees and how that is worked out amongst you.

21 MR. KANNER: There is no arrangement. Your Honor,
22 I'm happy to address that right off the bat.

23 THE COURT: Okay.

24 MR. KANNER: There is no prearranged deal with
25 respect to attorneys fees. No one on this side has

1 whacked-up fees, as it were, carved out percentages, that's
2 just not present. We don't practice that way. Our fees are
3 dependent ultimately at the end of the day presuming that we
4 are successful on Your Honor's determination of what is
5 appropriate.

6 THE COURT: Okay. Can I ask a question, and this
7 really goes for all classes, there are attorneys who aren't
8 obviously lead counsels but have filed cases, how are
9 attorney fees arranged, in general, in a case like this?

10 MR. KANNER: I think I understand, Your Honor. One
11 of the functions of the co-lead counsel -- well, it is two
12 functions. The first relating to efficiency, not just
13 between our own firms but between the firms who are not
14 co-lead counsel, and there are a number of those firms.

15 THE COURT: Right.

16 MR. KANNER: And, in fact, before I forget, as a
17 housekeeping matter, another case was filed yesterday, this
18 is the South Star -- I believe the South Star case. The
19 attorneys on that complaint are not part of this case thus
20 far, but I have been in contact with those attorneys.

21 THE COURT: This is another direct purchaser?

22 MR. KANNER: It is a direct purchaser wire harness
23 case.

24 THE COURT: Okay.

25 MR. KANNER: I believe it was filed yesterday

1 afternoon. The attorneys on that case called me and
2 specifically understood the nature of our motion today for
3 establishment of co-lead counsel, and they have authorized me
4 to represent to this Court that we have had that conversation
5 and that they approve the selection of co-lead counsel as set
6 forth in our motion.

7 Now, how that dovetails into your question, there
8 are 20, 30 firms that are going to be participating. We will
9 assign work to firms as needed. There will be billing caps
10 for certain roles. Certainly individuals whose exposure is
11 limited to reviewing documents traditionally in these cases
12 are capped at a certain level. Now, this isn't something
13 that we created for this case. I run any number of cases, as
14 do my colleagues seated at the table, and this is what is the
15 standard approach because we know that the courts look to us
16 as part of our role as co-lead counsel to run the case
17 efficiently and to not have duplication of time and effort.

18 We have a time reporting requirement. There is a
19 rather detailed sheet. Individuals have to indicate name,
20 their role, the specific assignment and which co-lead counsel
21 assigned that task.

22 THE COURT: Okay.

23 MR. KANNER: Work that is not assigned by co-lead
24 counsel will not appear on any fee petition that we put
25 before this Court, it is simple as that. And most of my

1 colleagues in this room are well familiar with that approach.

2 THE COURT: In reading the applications and looking
3 at the qualifications, and I have to say you are an
4 impressive bunch, I don't know about you in the jury, but
5 this side of the room, you certainly all have very impressive
6 qualifications, but that doesn't mean I want to abandon my
7 role and just say okay, you asked for it, you get it. I like
8 to be on top of the attorney-fee issue and when it comes up I
9 will address it appropriately.

10 MR. KANNER: Your Honor, we are happy to follow any
11 procedures that you would like to institute with respect to
12 that. Some courts, while it can be burdensome, require
13 counsel to file quarterly time reports. I don't know if Your
14 Honor wants to do that, but we are certainly amenable to
15 the --

16 THE COURT: I'm not there yet. I have read about
17 those things, I have read about different procedures, but to
18 be very honest I'm not there, that's why you are here to tell
19 me what your ideas are, okay.

20 MR. KANNER: If Your Honor has any other questions
21 I would be happy to address them.

22 THE COURT: Okay. I have a question. You also in
23 your application, or in Mr. Fink's application, have a
24 liaison counsel who is Mr. Fink, and I would like to go
25 discuss this with all due respect to David, who I know, I

1 would like to discuss that. What exactly is the role of
2 liaison counsel? I mean, as I read part of it, it is like
3 the old local counsel, and we have great computer systems and
4 CM/ECF which, of course, will be used. So what exactly does
5 liaison do?

6 MR. KANNER: The concept of liaison counsel, and I
7 don't want to reveal my age by this, but a number of years
8 ago liaison counsel was absolutely critical to any case that
9 was in a different jurisdiction than that attorney's own home
10 jurisdiction. Liaison counsel -- I hate to say in the old
11 days, I sound too much like my father, but liaison counsel
12 typically handled a lot of paper tasks. That role has
13 changed over the years. We look for liaison counsel that has
14 an intimate familiarity with the rules of that Court and that
15 district. We look for a liaison counsel who is well-known to
16 the Court. We look to liaison counsel as someone who can
17 communicate directly with the Court if there are any
18 questions. Liaison counsel also works with us on the case in
19 general in a committee position and status and truly adds to
20 our ability to effectively litigate and efficiently litigate
21 within this district.

22 And for those reasons, in addition to Mr. Fink's
23 wealth of experiences both in antitrust and other litigation,
24 that we respectfully urge that the Court appoint Mr. Fink as
25 liaison counsel for our group. We believe it is an issue of

1 efficiency.

2 THE COURT: As I read his resume he could be a lead
3 counsel but he pops up as a liaison counsel, and I just
4 wonder why. You feel that your group needs a liaison counsel
5 obviously?

6 MR. KANNER: We believe it would benefit both our
7 group and the Court candidly.

8 THE COURT: All right.

9 MR. KANNER: And it is not --

10 THE COURT: Let me go one step further, and each of
11 these groups I'm going to ask this question so be prepared to
12 answer it, but there was a little bit of a discussion about a
13 master that was used in some case. I am very much
14 considering a master except that I would like somebody
15 neutral, and I also am considering the executive committee
16 which some of you have mentioned, others have not. I would
17 like your input on that based on your information considering
18 your position and considering the fact that there are other
19 cases, MDLs, that may be coming forward.

20 MR. KANNER: I would be happy to address those. I
21 heard the comments with respect to a special master. My
22 experience over 30 years has indicated that special masters
23 aren't needed at the beginning of a case. The issues that
24 are likely to be raised in the next year are really issues
25 that will be dispositive, unique to this Court, or on a

1 discovery basis which are on occasion handled by the
2 magistrate, particularly if that magistrate has
3 discovery-related and ESI-related experience. That's
4 becoming more and more a hot-button issue in the prosecution
5 of these cases. ESI, of course, is electronically stored
6 information.

7 I don't think a special master is necessary in this
8 case. I don't think --

9 THE COURT: You don't see a special master as doing
10 discovery, do you, is that what you are saying?

11 MR. KANNER: I don't, Your Honor. And candidly the
12 concept of a special master along with an executive
13 committee, those are truly hybrids that come out of the mass
14 tort bar. This is not a mass tort case. There is nothing
15 mass tort about this case. This is a conspiracy case. There
16 are specific groups; there are direct plaintiffs, there are
17 indirect or end-payor, and then there are the car dealers. I
18 don't see a need for a special master. In fact, I think that
19 would end up potentially being a bottleneck. I don't think
20 there is anything that the Court in the foreseeable future,
21 either Your Honor or the magistrate, couldn't handle easily.
22 I also think that the executive committee is --

23 THE COURT: What is an executive committee?

24 MR. KANNER: Well, it is typically -- the last
25 executive committee that I participated in was in the pedicle

1 screw litigation, which was one of the few forays of my
2 firm's 20 years ago into the mass tort industry. It is a
3 phenomena of mass tort cases where you have dozens, hundreds
4 of lawyers all of whom have 1 client, 10 clients or 50
5 clients. There you need a special master. There you need an
6 executive committee. The structure in this case, the
7 structure in antitrust cases, I have never been in an
8 antitrust case that had an executive committee that was
9 composed of various competing interests. Let's understand,
10 the direct plaintiffs have a very different claim as under
11 the Sherman Antitrust Act than my colleagues in the indirect
12 bar. There is no subjective judgment with respect to that,
13 but they are very different claims.

14 There is a conflict actually -- there is a reason
15 that you can't have a lead counsel that represents each of
16 those classes, it is an inherent conflict, and there is a
17 reason why an executive committee doesn't make any sense.

18 Part of Your Honor's notes in the -- oh, my
19 goodness, in the order setting initial status conference,
20 your order had paragraph I listed which had four items;
21 willingness to commit to a time-consuming process, ability to
22 work cooperatively with others, professional experience and
23 sufficient resources.

24 Under Category 2 we have already accomplished that
25 which arguably an executive committee might do. We have been

1 working with the end-payor groups. They are fine lawyers
2 that we have worked with for many, many years, we know them
3 well, they are friends, they are colleagues at the bar. So
4 each of the end-payor groups we have worked with on many
5 occasions. We have communicated with them to put together
6 the CMO. We have cooperatively worked with both of these
7 groups and with defendants to put together the CMO. That's
8 what we do. That's our job as co-lead counsel. I don't see
9 the need and, in fact, see again an executive committee as a
10 layer which is not going to promote efficiency or economy
11 within the case.

12 THE COURT: Okay. Thank you.

13 MR. KANNER: Thank you very much, Your Honor. May
14 I approach the Court and present the order?

15 THE COURT: You may.

16 MR. KANNER: Thank you.

17 THE COURT: Let me ask the defendants if there's
18 any comments on this, any objections?

19 (No response.)

20 THE COURT: No. All right.

21 MR. BECNEL: Your Honor, I would like to speak to
22 that issue if you don't mind? Daniel Becnel.

23 Ms. McEVOY: Your Honor, Julie McEvoy again.

24 We don't take any position with respect to any of
25 the applications currently before the Court other than to ask

1 the Court to appoint in your judgment the most experienced
2 antitrust counsel. I would agree with Mr. Kanner in his
3 presentation and discussion concerning an executive committee
4 that it is a layer of bureaucracy that is not used in these
5 types of cases and would add some additional difficulty and
6 perhaps inefficiency particularly since we do know each
7 other, we have litigated against one another for many years
8 and work very well together without adding some additional
9 layer of structure.

10 THE COURT: All right. Thank you very much.

11 Any other comments on the application for direct
12 purchasers?

13 MR. BECNEL: Oh, no, not on direct. I'm sorry.

14 THE COURT: All right. The Court will grant the
15 order appointing interim lead and liaison counsel for the
16 direct purchasers as requested.

17 MR. KANNER: Thank you, Your Honor.

18 THE COURT: I'm not sure of the liaison, Mr. Fink,
19 but --

20 MR. FINK: I will find something to do, Your Honor.

21 THE COURT: But I am interested in seeing how it
22 works and trusting that when it comes to attorney fees we
23 will not be duplicating fees here.

24 MR. FINK: Thank you, Your Honor. We will respect
25 that.

1 THE COURT: All right. As to the dealerships'
2 application, we have somebody who is, in fact, admitted?

3 MR. BARRETT: I'm not admitted, Your Honor.

4 THE COURT: Come on forward, please. May I have
5 your appearance, please?

6 MR. BARRETT: My name is Don Barrett, Your Honor.

7 THE COURT: And you have been admitted or are
8 admitted here?

9 MR. BARRETT: I have not been admitted here.

10 THE COURT: Is there anyone who has been -- who can
11 argue your motion?

12 MR. MANTESE: Your Honor, Gerard Mantese. I am
13 obviously admitted. I wasn't prepared to argue today, Your
14 Honor. Mr. Barrett is well-known throughout the country, and
15 didn't get the paperwork submitted in time.

16 MR. BARRETT: Your Honor, if I could just speak
17 generally about these topics without arguing the motion?

18 THE COURT: We can make our first exception here,
19 and I will allow you to argue. Go ahead.

20 MR. BARRETT: Thank you, Your Honor.

21 THE COURT: Nobody tell the Clerk on me, but go on.

22 MR. BARRETT: Thank you. May it please the Court,
23 I am one of the three proposed co-leads for the automobile
24 dealer class.

25 And the first thing I would emphasize and want to

1 emphasize is that I think everybody here, at least on the
2 plaintiffs' side, would agree that there is a real conflict
3 between the two groups of indirect purchasers, the automobile
4 dealers and the end-payors who are the consumers who buy from
5 the automobile dealers. Your Honor has already put your
6 finger on it, it is the pass through, how much is passed
7 through -- how much of the overcharges were passed through to
8 the ultimate consumers, and that will, because of that, a
9 pretty important issue.

10 Those of us who represent automobile dealers could
11 not represent the consumers nor could the consumer attorneys
12 represent the automobile dealers but, of course, we have
13 common interests and we have, as Mr. Kanner said, we have
14 cooperated already in the drafting of the CMO and there will
15 be a lot more cooperation and that won't be a problem. We
16 know these folks, we have been friends for years, and we will
17 be able to cooperate not only with the direct purchasers but
18 with the end-payors as well.

19 And Your Honor I think understands that it is
20 important that these appointments be made as quickly as
21 possible so that in dealing with the CMO -- Ms. McEvoy told
22 us on one occasion that it is hard for us to deal with you
23 because you don't have any authority yet, speaking to all of
24 us, and, of course, she was right about that, but we are --
25 we have been working hard on this case, we have been

1 investigating it as well for almost a year now, and we have
2 done quite a bit already, and we are ready to hit the ground
3 running if Your Honor sees fit to appoint us.

4 You asked the question earlier how many auto
5 dealers there are. There are about 20,000 roughly in the --
6 at any one time in the 29 states that have indirect purchaser
7 laws. I point out that these are, generally speaking,
8 sophisticated businesses, the people that run them are
9 sophisticated businessmen, they want to be hands-on. We
10 will -- it will require a considerable amount of effort.
11 These are not clients that, you know, a friend of your
12 secretary type clients that you have in consumer cases.
13 These are many, many sophisticated businesses all around the
14 country.

15 And the co-lead structure that we have proposed we
16 are geographically diverse and we have different strengths.
17 I've been in charge of several national MDLs over the years,
18 and I guess if I have a strength it is being able to work
19 cooperatively with people to herd cats, if you will, in
20 situations like this.

21 The Cuneo firm has vast experience in antitrust law
22 and international antitrust law. One of Mr. Cuneo's partners
23 ran the justice department's division of international law
24 and antitrust law, and has actually written a book on the
25 subject. So since this litigation started, I mean, we have

1 worked it out among ourselves, we have a group that is
2 capable, both financially capable of doing it, we have enough
3 attorneys to do it, seasoned litigators, people who have
4 tried cases, and we've hired experts, we've consulted
5 extensively with them.

6 Your Honor, there is no opposition. We have gotten
7 all of the firms, we have calls almost every day now from
8 dealers around the country that want us to represent them.
9 There seems to be in the dealership community a satisfaction
10 with us as representing this particular class, and we are
11 capable, we are ready to hit the ground running.

12 THE COURT: All right. You propose for co-lead
13 counsel your firm, Larson and King, and Cuneo --

14 MR. BARRETT: And the Cuneo firm, yes, ma'am.

15 THE COURT: Okay. You also have an executive
16 committee, and, of course, you heard our discussion before
17 and I would like to hear your comment on that.

18 MR. BARRETT: My take on it is a little bit
19 different than that. I definitely agree with Mr. Kanner that
20 we don't need an overarching executive committee, that it
21 would add a useless layer of bureaucracy. Within our group
22 an executive committee would be useful just as a way of
23 having a place for the people who want to be active in the
24 litigation to come in and assist. It is our job as co-lead
25 counsel to see that there's no duplication of effort.

1 THE COURT: Okay.

2 MR. BARRETT: The executive committee that we
3 envision will help ensure that, and it won't be something
4 that -- it will help co-lead counsel be able to manage the
5 case better.

6 THE COURT: And what about liaison counsel?

7 MR. BARRETT: We think a liaison counsel is
8 important. It is important to have in a sense local counsel,
9 I understand that, and I also understand electronic things
10 now and it is different than it used to be, but our -- the
11 Mantese firm is a good firm, they have been in active
12 litigation practice for over 30 years, they know what they
13 are doing, and --

14 THE COURT: And they satisfy the local counsel
15 rule.

16 MR. BARRETT: And they satisfy the local counsel
17 rule.

18 THE COURT: So that they are admitted here.

19 MR. BARRETT: Yes, ma'am, and I will be too the
20 next time we talk Lord willing.

21 THE COURT: Thank you.

22 MR. BARRETT: Thank you, ma'am.

23 THE COURT: Wait a minute. Before you sit down, do
24 you have any comments about the special master or use of
25 special masters?

1 MR. BARRETT: Well, I do, and I don't want to
2 disagree with Steve but I'm lead counsel in an MDL that has
3 been going on nine years up in the Northern District of Ohio
4 in front of Judge O'Malley, Kate O'Malley up there, the
5 welding fume litigation. She appointed a special master
6 early on mostly to do discovery work and to handle the
7 discovery. And if you have a special master that is -- well,
8 if you have a magistrate who has the time to devote
9 exclusively to one case then that's all you need, but the
10 court in the Northern District of Ohio didn't have that and
11 so appointed a special master. He proved himself invaluable
12 to both sides in having him there, and he attended all
13 trials, all hearings, and developed an institutional
14 knowledge of the case that was -- it was very important in
15 the litigation. So my take is a little bit different but, of
16 course, we will be -- I'm not preaching for that.

17 THE COURT: Thank you.

18 Ms. McEvoy?

19 MS. McEVOY: Forgive me, Your Honor, because that
20 is an issue that I neglected to address a moment ago. We
21 agree with Mr. Kanner on that point as well, we are far too
22 early in the litigation to talk about a special master. It
23 may be that there comes a point where that would make sense,
24 but in this first year or so where as Mr. Kanner pointed out
25 we'll be putting dispositive issues in front of the Court,

1 those will be for you to decide, so we would ask the Court to
2 postpone or to forestall a decision about something like a
3 special master until we have a better idea of who is in the
4 case, who is out of the case, what claims are in or out, and
5 frankly what disputes are likely going to be appropriate for
6 a special master, and we are just not there yet.

7 THE COURT: All right. Thank you.

8 The Court has reviewed the applications and it
9 certainly finds the firms for co-lead counsel to be well
10 qualified and satisfies the four parameters that the Court
11 has put forth. We do need the liaison counsel as local
12 counsel so I will agree with that. I'm not going to appoint
13 an executive committee however. An order may be entered
14 excluding the request for executive committee, granting the
15 application for the dealerships for interim and lead counsel.

16 All right. Now we get to the end-payor
17 applications and for that the Court has three -- Mr. Miller?

18 MR. MILLER: Your Honor, I was just going to get to
19 the microphone.

20 THE COURT: We have three applications, and as I
21 understand this there are three totally separate groups, you
22 each have your co-lead counsel, correct? And also you seem
23 to be geographically diverse; we've got west coast, southern,
24 and then we have the national firm. So I will give you each
25 as I call upon you an opportunity to let me know why it

1 should be your firm or should there perhaps be a mix amongst
2 the three groups of applications.

3 So we will start with the first application, and
4 they are simply in alphabetical order, so that is Becnel,
5 Lambert and Nevares. Who is speaking? You also happen to be
6 the first to file, Mr. Becnel.

7 MR. BECNEL: May it please the Court,
8 Daniel Becnel.

9 I'm going to make your job a little bit easier
10 because I am going to withdraw and support people that I know
11 well, and I would like to address the issues you talked about
12 early.

13 THE COURT: All right.

14 MR. BECNEL: When you go to Palm Beach shortly to
15 spend two or three days with all of the MDL's judges, they
16 have a conference there.

17 THE COURT: Oh, I'm going to Palm Beach?

18 MR. BECNEL: You are going to the Palm Beach to
19 The Breakers, to The Breakers.

20 THE COURT: All right. For the October meeting is
21 in Palm Beach you are telling me?

22 MR. BECNEL: You're going to love it, you're going
23 to love it.

24 What happens, Judge, is as you know the first
25 manual for complex litigation was written by Judge Pointer

1 who is now deceased. And Mr. Joe Cotchett and I were
2 involved in the first major MDL dealing with the swine flu
3 inoculation program against the United States Government; we
4 wound up taking depositions of Jonas Salk, Lou Saban,
5 Joe Colafana (phonetic) and the President of the United
6 States which was unheard of. Gerhart Gizelle (phonetic) was
7 in the process of sending people every time we would be in
8 Washington, D.C. to the penitentiary for the Watergate break
9 in, and we would be in between.

10 But here is what I want to talk to you about, the
11 firms that I know and who could do the absolute best job.
12 Number one, what works in an MDL, for example, Mr. Barrett
13 and I, I know him well, his son is married to my niece, and
14 it is three generations of Barretts that have been lawyers
15 just like in my firm three generations of my firm everybody
16 is a lawyer and married to a lawyer or a judge.

17 So what is important is to get a special master
18 from day one. What you talked about is not having the
19 magistrate do a lot is basically what is being done in a lot
20 of MDLs.

21 For example, if you look around the room there are
22 only two Hispanics here, Mr. Salas and Mr. Nevares from
23 Puerto Rico. The good Hollis Salzman was one -- and we were
24 all co-lead counsel in the Cabotage case. We didn't have to
25 take one deposition, but it took us three years to get it

1 done. We had Professor Arthur Miller from Harvard and NYU
2 there. This is really, really important. The judge,
3 Judge Fallon, who has done the Propulsid case, the Vioxx case
4 for 4.85 billion and the Chinese drywall case, which is
5 probably the most difficult case any of us have ever been on.
6 Judge Fallon had to go all the way to Hong Kong to supervise
7 depositions because the Chinese wouldn't answer questions and
8 they are dealing with a jurisdictional issue.

9 What Judge Heyburn has done is started a process in
10 these cases, he's hired Francis McGovern, the Kohn law firm
11 in the breast implant case that we all worked on years and
12 years ago, and it took 13 years and it is still not finished,
13 as did Kirkland & Ellis, and it is still not finished as the
14 defense lawyers.

15 So what you need to do is listen to what the new
16 techniques are to get cases settled and to get them resolved
17 because the criminal docket here, just like everywhere else
18 in the country, is just overwhelming, and civil litigation
19 sort of takes a back seat.

20 So he appointed Francis McGovern, who was a special
21 master that Judge Pointer appointed to help get that case
22 resolved, and that case was ultimately resolved for
23 \$7.2 billion.

24 Mr. Barrett, on a tobacco case, we represented
25 everybody, the states, we represented individuals, we

1 represented everybody. Whoever heard of 300 plus billion
2 dollars in settlements. I was involved in representing
3 California. Barrett, half of the attorney generals in the
4 country. We took depositions, we had enumerable documents,
5 we had whistleblowers and what have you.

6 So what works is things that you can eliminate if
7 you listen to some of this vast wealth of knowledge of all of
8 these lawyers so you don't have to be behind a learning curve
9 where you send lawyers to Hong Kong and then the Chinese will
10 not answer questions so they come back with nothing, and then
11 the judge has to go to the United States Embassy and have the
12 depositions there where he's in charge of them. So --

13 THE COURT: Sounds okay.

14 MR. BECNEL: Well, it's a long flight.

15 I have had the opportunity to have been called upon
16 by Japanese industry and universities to help craft the
17 product liability law for Japan. When I went there I was
18 amazed. Virtually every one of the companies that are
19 dealing with many of the automobiles hired me to go teach
20 them what should they do because President Clinton was about
21 to be the president. And I said look, there isn't a woman in
22 here, not one. It was nothing but engineers and all men
23 bowing me giving me cards. And I said the first thing you
24 are going to see is you are going see a transformation; you
25 are going to see Hispanics, you are going to see females, you

1 are going to see African-Americans all appointed to the
2 bench, and you darn well better have people in your
3 organizations that reflect if you are going to do business in
4 the United States and get sued in the United States. If all
5 you due is send men, and if you look at this group, count the
6 number of women, one, two, three, four, five, half a dozen.
7 Not one African-American, not one African-American. Only two
8 Hispanics. That's wrong. That's wrong. You need a diverse
9 group.

10 Joe Cotchett's book, Federal Courtroom Evidence,
11 sits on almost every federal judge's bench that I have ever
12 been in, and he wrote that 15, 20 years ago, and supplements
13 it, and he donates it to all of the federal judges. His
14 partner, Sue Illston, is a federal judge in San Francisco.
15 He's one of the most respected lawyers I know in this
16 country.

17 The original old Goodkind Labaton, which is now
18 Labaton Sucharow, I did a chemical case with them in
19 New Jersey, killed a bunch of people. They have a diverse
20 practice, they know what they are doing, and the group that
21 they have put together makes me humble. I'm sure I'm going
22 to get some work from all of them because I'm usually taking
23 depositions in London in Viagra, in Sulzer Orthopedic for
24 Judge O'Malley in Vienna, Austria. I teach at the Technical
25 Institute of Vienna on experts. I have been in every type of

1 case there is in this country in my 43 years. Almost every
2 ship collision, train derailment, plant explosion, product
3 liability. I have been to this town so many times to take
4 depositions in the Ford -- I have the Congress of the United
5 States when the Deep Water Horizon happens calling me to give
6 them the experts they need to do their investigation. Same
7 thing with the Toyota, and Joe's partner is one of the
8 leaders in the Toyota case, Congressman Waxman and
9 Congressman Markey and all of those that lead these
10 investigations, who are the best experts we can use, and we
11 talk to them. Sometimes you get appointed to the committee,
12 sometimes you don't.

13 I'm getting too old to be worried that I need to
14 lead the parade every time, but I can tell you that if you
15 look at all of the big cases -- you know, one lawyer talked
16 about pedicle screw, I had 20 lawyers working on pedicle
17 screws. I took depositions in France in the middle of a
18 strike for three weeks in pedicle screw. We lost that case
19 before the United States Supreme Court the same day the
20 Bush-Gore case was argued.

21 So there is a vast amount of experience of all of
22 these lawyers, and I will withdraw and support their team as
23 being leaders that I can work under, and if I can work under
24 anybody usually wanting to lead the parade I can tell you I
25 have a great deal of respect for them.

1 Now, I would suggest David Kohn as a special
2 master. He's right over here in Cleveland. David, not only
3 with Judge O'Malley who now sits in the Circuit Court, but in
4 Toledo we have had two major cases, and Judge Katz, we
5 settled all of the Ortho Evra birth-control patch cases with
6 him. He now has all of the cases involving hips that you
7 read about every day and all of the revisions that are
8 needed. We've had virtually --

9 THE COURT: Tell me succinctly how do you define or
10 what would you say a special master would do in a case of
11 this nature?

12 MR. BECNEL: Okay. Here is what happens. All of
13 these lawyers are from Chicago, New York, the west coast and
14 so on and so forth. I'm going to give you an example what
15 Judge Fallon does, let's just say in a big complex case. He
16 calls on the liaison counsel, come to my chambers, and so
17 their liaison counsel shows up, this liaison counsel, and
18 they deal with issues so all of these lawyers don't have to
19 show up, and then they in turn notify the lawyers, look, the
20 judge has this motion, she is concerned about it, might need
21 oral arguments, might not need oral arguments, and they deal
22 with the issues on a day-to-day basis, and a lot of times
23 they are involved in the give and take of negotiations on
24 what is privileged, what is not privileged.

25 And what they also do in the MDLs today is they set

1 out a schedule right now when you start a case, eight to ten
2 months in advance, we are going to meet every 30 days, every
3 60 days, whatever the Court wishes, and you let everybody
4 know so nobody has conflicts. And you don't send -- you will
5 never see this group of lawyers again, this many, and you
6 deal with who does that. Mr. Cotchett might say, man, I'm on
7 the west coast, I'm in another case, Hollis, you handle this
8 or, Mr. Becnel, you handle that. That's what you do and in
9 effect an executive committee that kind of assigns the task
10 or the lead counsel that assigns the task, but each group
11 should have a liaison counsel because there are conflicts
12 between them.

13 You know, I tell you what, once you go to Japan
14 you're not going to want to go again, it is a long, long way,
15 and especially if you are coming from the east coast it is
16 even longer. But the thing is that we know how to make this
17 efficient. We have learned to take a case like Vioxx, have
18 17 trials, wind up with a \$4.85 billion settlement and it is
19 done and all of the people have been paid within two years.
20 Unheard of. Unheard of.

21 THE COURT: Okay. So your recommendation or your
22 support is behind the Labaton Sucharow application?

23 MR. BECNEL: Absolutely 100 percent and, you know,
24 the reason why the group I put together at first, as you saw,
25 one was an automotive engineer here for eight years and a

1 lawyer and a Michigan graduate, and I have worked with him
2 before, he knows everything about automobiles we need to
3 know. I would hope that that group would utilize him. We
4 have Hispanic -- I mean, this population in this country now
5 is 15 to 20 percent Hispanic, a lot of them don't speak
6 English, and these two fine lawyers -- and by the way, you
7 know, they could deal with those issues.

8 THE COURT: Okay.

9 MR. BECNEL: You need a diverse group of people to
10 work on this case.

11 THE COURT: And I support a diverse group.

12 MR. BECNEL: Thank you.

13 THE COURT: Okay. Thank you very much, Mr. Becnel.
14 Our west cost application, Brian Strange?

15 MR. STRANGE: Good morning, Your Honor. It is a
16 privilege to be in your courtroom and it is an honor to be
17 submitting my application.

18 I want to address this fairly succinctly if I can.
19 There are two main subject matters I want to cover. The one
20 is the organization of the cases that Your Honor mentioned
21 and, two, my proposal that there be four co-leads for the
22 end-payors.

23 With respect to the organization of the cases, Your
24 Honor, three of the defendants, Yazaki, Sumitomo and Delphi,
25 represent 70 percent of the companies who manufacture the

1 wiring harness. And the reason that's significant is that
2 those companies are the ones who gave bids to the car
3 companies such as GM and Toyota, et cetera, to make those
4 parts. So in our investigation you have GM and Ford,
5 et cetera, buying from a small group of defendants and then
6 selling those basically directly to the automotive dealers.
7 And one of the issues here, Your Honor, is that the class
8 includes not only wiring harnesses but related parts. You
9 will see a footnote to the complaints; related parts includes
10 a number of components which would include for instance
11 terminals and what are called electric control units or
12 electronic control units.

13 The reason I raise that is some of the dealers I
14 found out actually purchased terminals directly from some of
15 these defendants, but I'm not suggesting that you don't have
16 the dealership class, I'm suggesting that there may be issues
17 within that class in addition to the pass-through issue that
18 Your Honor raised is whether there were direct purchases from
19 those defendants, but this case is somewhat unusual in that
20 you don't have that many direct purchasers, you have the
21 corporations and the smaller companies that buy other than
22 the OEMs, the OEMs represent the mass number of direct
23 purchasers.

24 So what it really comes down to is the size of the
25 end-payor class, which is huge, which is why I submit we

1 should have four co-leads there.

2 With respect to the makeup of the case, Your Honor,
3 you have Yazaki who pled guilty on January of this year with
4 respect to wiring harnesses, and you have also a plea from
5 that company regarding instrument panel clusters, which is
6 another MDL, and fuel senders. Those conspiracies with
7 respect to the wiring harness conspiracy went from January of
8 2000 to February of 2010. For the instrument panel clusters,
9 the plea said it went from December of 2002 to February of
10 2010, and the fuel senders from March of 2004. The reason I
11 raise those dates, Your Honor, is that I believe that the
12 conspiracy periods may have been different and the
13 participants in the conspiracy may be different, and that's
14 why when those MDLs get transferred to Your Honor, which I
15 believe they should, they may deserve different leadership or
16 at least different firms that address those separate
17 conspiracies.

18 The first defendant to plead guilty is the Furukawa
19 Electric, they pled in September of 2011 only as to wiring
20 harnesses. And then you have Denso, who also pled in January
21 of this year, and their plea was regarding electronic control
22 units, ECUs, and the heating panels. The reason I raise that
23 is the ECUs are part of the related products that are in this
24 case. Denso is named by some but primarily Denso is in the
25 heating panel MDL.

1 So I raise those issues because I think they are
2 important with respect to organization and they kind of help
3 define the mass part of this case. As Your Honor is aware,
4 this is not only an investigation and these pleas were not
5 only by the Department of Justice but there was
6 investigations by the Japanese Fair Trade Corporation and the
7 European Union, and with respect to the international realm
8 of this conspiracy you've got three categories of damages and
9 those categories were described in the plea agreements that
10 were entered as these defendants. One category is parts made
11 in the United States and sold to cars in the United States; a
12 second category is parts made in Japan and sold to the U.S.
13 in those cars sold to the U.S.; a third category of damages
14 is parts made in Japan, put in cars in Japan, but ultimately
15 sold to consumers in the United States. And that, Your
16 Honor, is only the Japanese components.

17 There is a European component alleged in this
18 overall conspiracy, so the number of cars involved include at
19 a minimum Toyota, Chrysler, Ford, Nissan, Honda, GM, Subaru,
20 Mazda, Renault, and then when you get into the European
21 models you have Mercedes and BMWs.

22 So that is sort of a long-winded way to say that
23 this is a massive case. I think it deserves -- it has
24 millions of class members, it has very complicated issues.
25 And one of the reasons that we were still investigating and

1 kind of filed late is other issues such as Toyota owns
2 20 percent of Denso, and the former auditor of Denso is now a
3 chairman of one of Toyota's companies. We knew about the
4 Delphi bankruptcy, so those kinds of issues are complicated
5 and certainly the plaintiffs' bar here I have -- I am very
6 humbly standing before Your Honor because their resumes would
7 far outstretch mine, but I do believe that I can be of
8 assistance both with my knowledge of class actions with the
9 Japanese automobile industry based on my experience and
10 helping organize.

11 With respect to the work done, I have mentioned a
12 little bit of the investigation that we have done with
13 respect to both dealerships and repair shops, who they buy
14 from, what are the pricing arrangements between those
15 companies, those are some of the investigations we have done
16 including our economic analysis of the percentage of the
17 market. And I think we already set forth in my application
18 that I'm currently on the executive committee of a
19 price-fixing case in polyurethane foam which is one of the
20 largest antitrust cases. That case does have an executive
21 committee.

22 THE COURT: How do you feel about it?

23 MR. STRANGE: I think it works very well, Your
24 Honor, but executive committees really depend and leadership
25 depends on who the law firms are. I mean, generally, the

1 quality of counsel here can direct cases and will give out
2 work appropriately. The reason really for executive
3 committee is to give an honor to someone who helps support
4 you and then to make sure they get work. In this size and
5 magnitude of a case I think it definitely warrants for lead
6 for the indirect purchasers, and the executive committee can
7 work very well. The leads are concerned with different
8 issues, and the executive committee gets assignments from the
9 lead counsel.

10 THE COURT: How do you feel on a master?

11 MR. STRANGE: With respect to the master I would
12 suggest holding off on that because one of the things that
13 happens in a special master is it sometimes gives lawyers the
14 impetus to say let's go talk with the special master instead
15 of working it out.

16 THE COURT: Okay.

17 MR. STRANGE: The best thing that can happen in
18 these kinds of cases with the skill of the defense bar and
19 the skill of the plaintiff bar is to try to work it out, and
20 if we bring it to Your Honor it's a serious matter, and no
21 one wants to bring it to Your Honor because Your Honor is
22 going to look at us first and say why didn't you work that
23 out, so I think you want to encourage that. If we get
24 delayed then a special master would be a great asset.

25 Just finally, Your Honor, I think that my

1 experience in class actions will assist the Court which is
2 ultimately the goal of leadership is to try to resolve the
3 case and try to make it easier to the Court in these kind of
4 complex cases.

5 THE COURT: Thank you.

6 MR. STRANGE: Thank you, Your Honor.

7 THE COURT: Okay.

8 MS. SALZMAN: My turn?

9 THE COURT: You may. Ms. Salzman?

10 MS. SALZMAN: Hollis Salzman from Labaton Sucharow.
11 Thank you, Your Honor.

12 THE COURT: See, I can remember the women because
13 there are so few. It brings me back to the days that I
14 started to practice, but go ahead.

15 MS. SALZMAN: I understand. I want to thank
16 Mr. Becnel for his endorsement. That brings the number of
17 cases that support the three co-lead structure to 36 out of
18 the 37 end-payor cases.

19 Our application is on behalf of a three-firm
20 co-lead structure, that's the Labaton Sucharow firm, the
21 Cotchett, Pitre firm and the Susman Godfrey firm, as well as
22 the Miller Law Firm as our liaison counsel for the end-payor
23 cases.

24 THE COURT: What pray tell is additional counsel?

25 MS. SALZMAN: Liaison counsel is -- when you say

1 additional --

2 THE COURT: I don't know. You have at the end you
3 have liaison counsel, Paul Miller, and then additional
4 counsel.

5 MS. SALZMAN: What the reference to additional
6 counsel is those were firms that were on our original
7 complaints but they were not seeking a liaison or co-lead
8 spot in this case, so they are -- we didn't want to drop them
9 since they were on our complaints, they are additional
10 counsel supporting the leadership structure. It was just to
11 give them some kind of name so it didn't look like they were
12 hanging out there.

13 THE COURT: Well, would they be different than any
14 of the other counsels who have filed cases and aren't in any
15 one of these applications?

16 MS. SALZMAN: They would not be different in any
17 respect.

18 THE COURT: Okay. Thank you.

19 MS. SALZMAN: They just were on our original
20 complaints and the other lawyers were not.

21 THE COURT: Thank you.

22 MS. SALZMAN: You're welcome.

23 We think that the three co-leads that are proposed
24 here are the strongest, best-qualified group to lead this
25 case. The three law firms, of the firms that have applied

1 for leadership for the end-payor cases, are nationally
2 recognized antitrust firms and have decades of antitrust
3 class-action experience and have been recognized by courts
4 and various awards throughout the country as to its successes
5 in antitrust case.

6 Also important to note about the three firms is
7 they have significant indirect purchaser or end-payor
8 experience. I know we talked a lot about the difference --
9 the variations of the different groups. The end-payor cases
10 are distinct in that they represent those class of people at
11 the very end of the distribution chain. Those are purchasers
12 that do not resell, for example, like the middlemen cases do.
13 That's what sets us apart and is distinct.

14 All three firms, the Labaton firm, the Cotchett,
15 Pitre firm and the Susman Godfrey firm have experience also
16 with the cases involving automotive parts, automotive
17 companies, manufacturers and dealers and defendants located
18 in all parts of the world. And we are a diverse group, we
19 are located -- I'm in New York, the Cotchett firm is in
20 Los Angeles, Susman Godfrey is in Los Angeles and Texas, and
21 I think we represent a group that can sufficiently handle
22 this litigation as a group of three. I think this fact that
23 this group is supported by 36 of the 37 cases speaks measures
24 for their opinion as to the leadership put forth before Your
25 Honor, firms that have supported the structure or firms that

1 could equally be standing here today with likewise
2 qualifications for a leadership spot in this case.

3 In terms of the commitment of resources so far in
4 this case, this group of lawyers has been working on this
5 investigation for months, if not longer than a year. We
6 filed, as you know, the first wire harness case that came
7 before you, the LaCava case, that was in October of last
8 year, and we have been working diligently on this case all
9 the way through today. We have not only taken the lead on
10 briefing and arguing the MDL motion, we have taken the lead
11 on the briefing and successfully arguing the Lear bankruptcy,
12 we have been the lead counsel that's been the spokesperson
13 for the end-payor cases with defendants in negotiating
14 various stipulations in the case, all the way up through the
15 agenda that has been provided to the Court and the case
16 management order. We have already shown that we have good
17 relationships and the ability to work cooperatively with the
18 defendants. Not only are we able to work cooperatively with
19 defendants but as the co-counsel stated we have known these
20 attorneys and worked with them as co-lead counsel in other
21 cases in the past and are able to work cooperatively with the
22 other groups of plaintiffs' lawyers.

23 Are there questions that I can answer for Your
24 Honor?

25 THE COURT: Not regarding the firms. I would like

1 your comments as to the master issue and the executive
2 committee issue.

3 MS. SALZMAN: With all due respect to Mr. Becnel,
4 I'm in line with the other -- with the direct purchaser group
5 and the defendants. I think it is premature at this point to
6 have a special master appointed. I think there is going to
7 be a lot to do in this case before we get to a point where we
8 would even need a magistrate judge, and I think at that point
9 the parties will be further along in the litigation and will
10 have a better understanding and be able to fine tune the
11 issues in the case and make a determination and a
12 recommendation to the Court, hopefully jointly at that point,
13 as to what the best course is for this case.

14 THE COURT: All right. Good. Thank you.

15 MS. SALZMAN: Any other questions?

16 THE COURT: No.

17 MS. SALZMAN: Thank you.

18 THE COURT: All right. Let's take a 20-minute
19 break. We will resume -- maybe 15 if you can all get back
20 here by then. Thank you.

21 THE LAW CLERK: All rise. Court in recess.

22 (Court recessed at 11:47 a.m.)

23 — — —

24 (Court reconvened at 12:08 p.m.; Court, Counsel and
25 all parties present.)

1 THE CASE MANAGER: All rise. Court is now in
2 session. You may be seated.

3 THE COURT: All right. On the end-payor
4 applications, are there any other -- Mr. Miller?

5 MR. MILLER: Yes, Your Honor. Sorry. I was going
6 to get up and speak in favor of the Cotchett team of three,
7 who are superior lawyers in this field, but that area has
8 already been covered.

9 So just to take one moment, I think I have a unique
10 experience with your magistrate having litigated
11 malpractice -- complex malpractice cases with her in her
12 private practice and been in front of her as a magistrate
13 here. She is more than competent to handle any and every
14 issue that would come before her involving evidentiary
15 matters. If her workload is too great then I can understand
16 getting a substitute, but there is no question about her
17 competency to handle this complex litigation, and I would
18 move that the magistrate be in charge of this case, Your
19 Honor.

20 THE COURT: No. I think I'm going to keep in
21 charge of this case. Thank you very much.

22 MR. MILLER: I meant -- any questions of me, Your
23 Honor?

24 THE COURT: No.

25 MR. MILLER: Thank you.

1 THE COURT: I do agree she is more than competent
2 to handle this case.

3 MS. KUPFER: Your Honor, if I may, I'm Susan Kupfer
4 of Glancy, Binkow & Goldberg, San Francisco.

5 I filed a third case in this, and I would also want
6 to reaffirm that 36 of the 37 cases support the Labaton,
7 Cotchett and Susman Godfrey leadership structure. And I
8 think you understand as you are aware of private ordering in
9 this situation that many of us had long and thoughtful
10 discussions, many of us who are experienced antitrust
11 lawyers, have been ourself co-leads in other MDLs, have
12 stepped back to support this structure that is put forth
13 before you today. And we think it would be unfair at this
14 point if that structure was altered without giving others the
15 opportunity to also submit their applications. So I just
16 wanted to make that point. Thank you.

17 THE COURT: Thank you very much. Any other
18 comments?

19 (No response.)

20 THE COURT: All right. The Court in reviewing this
21 matter has decided, with all due respect to Mr. Strange who
22 is more than qualified, but I do think that given the
23 structure that has been put forward and agreed upon by the
24 majority of the end-payors, and given the unique
25 qualifications of the three firms involved, the Court finds

1 that they meet the four criteria as set forth in the Court's
2 order, and the Court will grant the application for four
3 co-lead counsel as set forth in the application, and will
4 grant liaison counsel to the E. Powell Miller firm in the
5 case, and I am striking additional counsel. I'm not quite
6 sure now whether that was in your motion or not, but I am
7 only going to do the co-lead and liaison.

8 So with that I think we have our counsel resolved,
9 and I wanted to do that because I don't know if any of you
10 need to leave early before -- I'm looking at the defendants,
11 not you, if any of you need to leave or anything before we
12 proceed.

13 Okay. Let me just get through my notes.

14 We do have -- or the Court received yesterday your
15 case management -- proposed case management order, and let me
16 pull it up here.

17 MS. McEVOY: Your Honor, on that note, I apologize,
18 it has been brought to my attention that there is a typo in
19 the cover letter. The parties' respective position on the
20 two questions in dispute are in Section B of the case
21 management order rather than Section C, so I apologize for
22 that.

23 THE COURT: I noted that. That's fine. I didn't
24 have a Section C actually. Did you note that?

25 MS. McEVOY: Yes, Your Honor, and that was my

1 typographical error, and I apologize for that. The cover
2 letter should have read Section B, so that if you flip to the
3 case management order, on my copy it is page 5, the
4 plaintiffs' proposal is set forth first followed by the
5 defendants' proposal.

6 THE COURT: Okay. Now, as I see it here -- my
7 clerk is telling me I have been fading out. If I do just say
8 so.

9 As I see the first issue on the case management
10 order is the service of process issue that needs to be
11 resolved, or at least the first one I would like to discuss.
12 And I think the first thing I'm noting is defendants want
13 more time to answer, which is why you're asking for
14 plaintiffs not to file until 45 days. Is that a correct
15 statement or no?

16 MS. McEVOY: I'm sorry, Your Honor. You actually
17 did fade out in the beginning there so I missed the first
18 part of your question.

19 THE COURT: Yes. My question is it looks -- it is
20 this 45-day period, first of all, for filing the amended
21 complaint that is at issue. Plaintiffs say within 45 days
22 and defendants say at 45 days. I don't know if that means
23 the 45th day or the 46th day, whatever, but you want a 45-day
24 leeway, defense wants, before?

25 MS. McEVOY: Let me tell you overall what we are

1 trying to accomplish which will put that 45 days into
2 context, Your Honor.

3 THE COURT: Okay.

4 MS. McEVOY: We have a situation where as I noted
5 at the outset we have a lot of differently situated
6 defendants, and that pertains to service as well as
7 substantive issues, and so what we would like to do for
8 convenience of all the parties, and quite frankly for the
9 Court, is to have a uniform schedule. We built the 45 days
10 in and we did have them filing at the end of the 45 days, we
11 would be flexible on filing sooner as long as the end date is
12 fixed. We would like a single date for responses by all
13 defendants who are served, and we will have to talk of course
14 about the appropriate means of service in a moment, but that
15 45 days was just to put the first step into place, followed
16 by a 60-day service period. And as I said a moment ago, you
17 know, if they want to file on day seven and reserve
18 additional time for themselves to service, we are amenable to
19 that, but what we want to do is to make sure that all of the
20 defendants are properly served via Rule 4 with the
21 consolidated amended complaint, and we think that is both a
22 substantive due-process issue as well as one of convenience
23 so that we avoid overlapping, duplicative briefs, lots of
24 different response dates. There are --

25 THE COURT: Wait a minute. I'm not exactly

1 following why -- what this -- the 45-day period.

2 MS. McEVOY: Sure.

3 THE COURT: You don't want them to file within the
4 45 or do you care if they file within the 45 if you have a
5 more definite date for --

6 MS. McEVOY: We don't care where they file in the
7 45, Your Honor, as long as the end date after filing, after
8 service, after a period to respond is fixed in time. We
9 don't want to be in a situation where Defendant A files a
10 response on day one, Defendant B, who has some of the same
11 issues but not all of the same issues, files a different
12 response a week later so that there are overlapping and
13 duplicative briefs. We want to have one date so that the
14 parties can coordinate their efforts as best as possible to
15 bring motions dealing with similar issues before the Court in
16 one paper at the same time.

17 I think this does -- if you would like me to I will
18 get into the service issue, Your Honor, because I think it
19 does dovetail into it. The Plaintiffs are proposing that
20 they be allowed to serve the consolidated amended complaint
21 on counsel for defendant if the defendant has been served
22 with just one of the underlying complaints. We are not
23 insisting that service need be effectuated of all of the
24 original complaints, but we would like the consolidated
25 amended complaint to be served via Rule 4 as to all

1 defendants so that those defendants know who's suing them,
2 they have had original service as to each of the plaintiffs,
3 not just one of them, and we think this is a real due-process
4 issue, Your Honor.

5 THE COURT: So you're saying -- wait a minute --
6 that the defendants have been served with some complaints but
7 not all complaints?

8 MS. McEVOY: Correct.

9 THE COURT: So that if they are served with one
10 consolidated complaint you want it under 4(e) or whatever?

11 MS. McEVOY: Yes, Your Honor, the appropriate
12 mechanism of Rule 4.

13 THE COURT: Okay.

14 MS. McEVOY: The reason for that is the
15 consolidation that we have talked about today does not merge
16 the cases or make one party to a case party to another by
17 virtue of someone else's service, and I think the law is
18 pretty clear in that regard. The defendants retain their
19 due-process rights notwithstanding the consolidation to
20 insist on service, which the Sixth Circuit has described as
21 not some mindless technicality but the fundamental
22 prerequisite for the court exercising jurisdiction over a
23 party.

24 As I mentioned a moment ago, the other reason is
25 that the plaintiffs say gosh, you know, if you have these

1 specific service issues for a particular defendant just go
2 ahead and put them in a 12(b)(5) motion, the Court can decide
3 whether it was sufficient service or not. We think that's a
4 big waste of time, Your Honor. It will result in a lot of
5 unnecessary paper for you. It will shift the cost and burden
6 of service to the defendants who will then be forced to brief
7 these issues to the extent that individual clients are not in
8 a position to accept or waive service of process, and that
9 plaintiffs shouldn't be allowed to shift that burden to the
10 defendants and to the Court.

11 Their response is, gosh, you know, it costs a lot
12 of money, we don't want to have to go through what we view as
13 a formality, and defendants respectfully submit that it is
14 neither a formality according to the law, and that was the
15 Friedman case, Your Honor, 929 F.2d 1151 at 1156. And as a
16 matter of cost it would be the defendants who will bear the
17 initial cost of filing these 12(b)(5) motions, and I'm
18 guessing plaintiffs are going to end up spending more on
19 ultimately needless motions if we can agree to a protocol to
20 serve the consolidated amended complaint than if they had
21 just filed it in the first place.

22 THE COURT: All right. Who is going to speak?

23 MS. McEVOY: Your Honor, if I may, just before I
24 sit down, one case I would call to your attention which I
25 think succinctly addresses the issues here particularly with

1 respect to service of the Japanese defendants is the Allstate
2 case at 249 F.R.D. 157, and it involved a situation, not an
3 MDL, but consolidated cases in which plaintiffs argued that
4 service by one defendant via the Hague Convention was
5 essentially effective as to a second complaint, and the court
6 disagreed, it talked about consolidation and the procedural
7 due-process issues that I have raised with the Court today,
8 and concluded that, in fact, service by one does not equal
9 service by both, and that each plaintiff had to serve the
10 complaint in order to put the parties at the same starting
11 line and give defendant adequate notice of the complaint by
12 one of the two plaintiffs.

13 THE COURT: Well, those plaintiffs who have already
14 served a particular defendant would not have to go through a
15 Rule 4 service?

16 MS. McEVOY: No, Your Honor. I think that's a
17 closer question to be sure, but that feeds back into this
18 timing point, Your Honor, that, you know, have them serve the
19 consolidated amended complaint, it wouldn't be enough, for
20 example, for Susan LaCava to serve her original complaint on
21 Yazaki Corporation, the consolidated amended complaint, in
22 order to effectuate personal jurisdiction vis-à-vis the other
23 plaintiffs who are parties to the consolidated amended
24 complaint with respect to the two Yazaki corporations to
25 serve via Rule 4 the consolidated amended complaint. So that

1 feeds a bit into the timing because, again, we would want to
2 build in a service period, let's get all of these cases, all
3 of these plaintiffs at the same starting line and then start
4 the briefing and motion practice, Your Honor.

5 THE COURT: Mr. Fink?

6 MR. FINK: Joe Kohn will address this.

7 THE COURT: All right. May I have your appearance,
8 please?

9 MR. KOHN: May it please the Court, Joseph Kohn of
10 Kohn, Swift & Graf in Philadelphia for the direct purchaser
11 plaintiff. And on these issues, Your Honor, we are
12 authorized to speak on behalf of the indirect groups as well,
13 both the dealers and the end-payors.

14 Your Honor, first of all, all of the U.S.
15 defendants have been served under Rule 4 with complaints in
16 all of the different classes. Several of the foreign
17 defendants at our request, as we do in every case, whether it
18 be an MDL case or a non-MDL case, we ask the defendants'
19 counsel whether their client would authorize them to accept
20 service, and two of the foreign defendants, two of the
21 Japanese companies, did, and they have accepted service,
22 that's the 4 Cal Electric Company and Sumitomo Electric
23 Industries, Inc., their Japanese entities as well as their
24 U.S. entities have been served.

25 There are several foreign defendants where the

1 Hague service of process is underway. Your Honor may recall
2 there was an order that the Court entered in February, I
3 think the 10th, authorizing the service that handled that
4 APS International to undertake service of the German entities
5 which require that under their procedures. The service of
6 the Japanese entities is underway but there is a certain
7 amount of time that that takes under those procedures.

8 What we have asked our colleagues or the ladies and
9 gentlemen of the jury to consider is whether because all of
10 the entities that are not yet served in a foreign country
11 have a U.S. entity that have been served. Two of them in
12 Japan have agreed to accept service. That they consider
13 accepting service so we would all be at the same starting
14 point, and then it is clear under Rule 4 that service has
15 been accepted or waived, and I don't think there's any
16 disagreement that then the rules apply that under Rule 5 all
17 subsequent pleadings are served on counsel. You don't go
18 back and send a summons or send the sheriff out or, you know,
19 registered mail or certified mail to serve people or to have
20 people continuing to knock on the door.

21 THE COURT: Well --

22 MR. KOHN: I think that is the usual process in
23 these MDLs by agreement, it is only a question of time. We
24 will effect the service, it is not --

25 THE COURT: It sounded to me though that what

1 Ms. McEvoy was saying is that some of the plaintiffs'
2 complaints have not been served on --

3 MR. KOHN: That's right, Your Honor. I think there
4 were 37 complaints of indirect purchasers where there are 11
5 or 12 complaints of direct purchasers. It has been a
6 convention of counsel in these matters to serve at least a
7 complaint, sometimes several, to go through these Hague
8 procedures which take a tremendous amount of time, to serve
9 at least one complaint with respect to those claims, and then
10 under Rule 5 the amended consolidated complaint by agreement,
11 by stipulation or by operation of Rule 4 and Rule 5 and cases
12 that have interpreted it provide that the consolidated
13 complaint then proceeds with service on counsel, and you
14 don't go back -- so we would request respectfully on
15 plaintiffs' side of this, as I say, we will effect the
16 service, it takes some time, we try to get updates from APS
17 and then it is at the embassy and then they send somebody out
18 to do it and they just take time, which is a valuable
19 commodity for all of us, but it will occur is that in our
20 experience if the Article 3 MDL court asks the same question
21 that we asked, as persuasive as we like to think we all are,
22 frequently the defense counsel be able to get their client's
23 authorization to accept the service.

24 We have no issues, we are not trying to rush them
25 to file their briefs. We said we will file the complaint

1 within 45 days. They wanted 60 days to file a motion, we
2 agreed, they have 60 days to file a motion. We also would
3 like it to be on uniform dates, and we think that's the best
4 way to do it without simply waiting on our hands while this
5 Hague process runs its course. As we say, it is not novel
6 either in this case where two of the foreign defendants have
7 already agreed to proceed that way or in other matters that
8 we have been involved in.

9 There is a matter out in California, I think
10 Judge Illston's name was raised with respect to
11 Mr. Cotchett's lead counsel in the LCD case, and there was
12 some back and forth on this and the court said, okay,
13 defendants, you want the complaint to be served under Rule 4,
14 that's granted, but I'm also ordering your counsel to accept
15 that service under Rule 4, so you sort of get to the same
16 point. And we would respectfully request the Court to, as we
17 say, ask the question that we ask, and I think you might be
18 more persuasive with this jury than I have been so far.

19 THE COURT: All right.

20 MR. KANNER: Your Honor, if I might, Steve Kanner
21 on behalf of the class representative.

22 We just did some pen to paper in terms of the time
23 that it would take to accomplish the process that Ms. McEvoy
24 suggested. From the time that the consolidated amended
25 complaint would be filed until the time that the defendants

1 would be obligated to respond, either by answer or most
2 likely a motion, would be 165 -- 165, is that it, 165 days
3 during which time we are, as Mr. Kohn stated, sitting on our
4 hands.

5 THE COURT: All right.

6 MS. McEVOY: A couple of points, Your Honor. There
7 are circumstances under which Rule 5 would not supersede the
8 need for Rule 4, and those are cited in Wright and Miller,
9 4(b) Section 1478. They involve situations where the amended
10 complaint contains new claims that differ significantly from
11 those in the original complaint, where the court believes
12 that service on the attorney is unlikely to ensure notice to
13 the party, which is a real concern for my client which
14 conducts business in Japanese and --

15 THE COURT: What? Say that again.

16 MS. McEVOY: If service on the attorney is likely
17 to ensure notice to the party, that's a particular concern
18 for my client. This is Wright and Miller addressing
19 situations in which Rule 5 might not supersede the need for
20 Rule 4 service of an amended complaint. My client conducts
21 its business in Japanese, it wants to be engaged in the
22 process of understanding these claims, and it is difficult
23 for it to do so without the translation that would accompany
24 Hague service.

25 On the LCD case, with due respect, I believe the

1 facts were slightly different than Mr. Kohn described them,
2 and, in fact, the LCD model was one that we employed in
3 thinking about the 165 days, which in the abstract I will
4 grant you sounds like a long time, but what we were trying to
5 do was to give appropriate time for the plaintiffs to
6 effectuate Hague service of the consolidated amended
7 complaint.

8 In the LCD case the court gave the parties 60 days
9 to do that, and the order does acknowledge that there were
10 some defendants who were willing to stipulate to service,
11 there were others in that case who were not and that's why
12 the 60 days was --

13 THE COURT: Those defendants or all of the
14 defendants I take it at this point, or at least most of them,
15 are represented by counsel here, right?

16 MS. McEVOY: Yes, Your Honor.

17 UNIDENTIFIED PERSON: All of them.

18 THE COURT: All of them. So why are we fooling
19 around? What is this? I'm willing to give -- I mean, I
20 don't know what plaintiffs want, but I am certainly willing
21 to give extra time so that, one, they can be converted to
22 Japanese, they can have time to talk to attorneys, but we are
23 actually talking about the service of process part, and if we
24 have attorneys who work for these companies, you know, are
25 you saying the companies are saying I don't care that you

1 work for me, I want to be -- I want somebody to come and
2 knock on my door and hand me the service?

3 MS. McEVOY: No, Your Honor, I don't view it as
4 that technical an issue at all. I really think they really
5 think it is an issue of process and their right to have the
6 complaint translated into the language in which they conduct
7 their business.

8 THE COURT: Okay. Let's stop there. So they want
9 a complaint translated into Japanese if they are the Japanese
10 company, is that what you are saying?

11 MS. McEVOY: Yes, Your Honor, which is an essential
12 component of service via the Hague convention.

13 THE COURT: Why can't we do that, what is hard
14 about that?

15 MR. KOHN: Joseph Kohn, Your Honor, for the direct
16 purchase plaintiffs.

17 We would be happy to have a translated copy of our
18 consolidated amended complaint, it is novel but we would be
19 happy to do it.

20 MR. PERSKY: This is Mr. Persky.

21 I think it is important to note that all of the
22 defendants -- virtually all of the defendants have been
23 served with the underlying complaints. Not every single one
24 of the complaints have been served on the defendants but
25 personal jurisdiction over the defendants has been obtained

1 either by service on the American subsidiaries, Hague service
2 on some of them, and waiver of service on the others, so if
3 we have obtained personal jurisdiction by the service of the
4 underlying complaint I don't understand why we have to go
5 through a Rule 4 process to serve the consolidated amended
6 complaint where the claims that we are asserting are only
7 wire harness claims, not new claims, and we don't intend as
8 far as I know to add additional parties. So in my experience
9 we have served the underlying complaint, the amended
10 complaint gets served on counsel.

11 If we haven't served some of the defendants then,
12 yes, we have to serve them and I'm not sure that there is
13 more than one or two defendants abroad who have not yet been
14 served. So it seems to me that the process they are
15 proposing is 45 days for the filing of a consolidated
16 complaint, 60 days for service, not service of the underlying
17 complaint, service of the consolidated amended complaint
18 under Rule 4 after they have already been served with the
19 underlying complaint, and then another 60 days to respond.
20 That's 145 days after we have already obtained personal
21 jurisdiction. To the extent that our prior service was
22 insufficient under the Hague Convention or they claim that
23 they had insufficient nexus in the U.S., that defense is
24 preserved and they can assert it in response to the
25 consolidated amended complaint either in their answer or a

1 motion to dismiss.

2 THE COURT: All right. Let me -- before we go on,
3 we didn't talk about the consolidated amended complaints yet
4 because we have process, direct plaintiffs have a
5 consolidated -- they had a motion to consolidate originally
6 and I take it will do a complaint, a consolidated amended
7 complaint. The indirect -- the dealerships will be doing the
8 same thing, and the end purchasers -- end-payors will be
9 doing the same thing, right?

10 MR. PERSKY: Yes.

11 THE COURT: All right.

12 MS. McEVOY: Your Honor, I'm not sure this fixes
13 all of the problems, and that's really what we are trying to
14 get at here, what is the most sensible way to fix all the
15 problems so we are not ending up in a situation where we have
16 a pile of briefs and --

17 THE COURT: We don't have any problems.

18 MS. McEVOY: I appreciate that, Your Honor.

19 There are some defendants who I understand have not
20 been served, there are some who might have qualms with the
21 manner of service. Let's just fix it, this is the right time
22 to do it.

23 THE COURT: Well, okay, let me just rule on this.

24 If a defendant has been served, they have been served. Now,
25 you have -- you may have some objections to the service, and

1 those will be raised at the appropriate time and as has been
2 indicated will be preserved with the amended consolidated
3 complaint, but I believe if you have been served then the
4 amended consolidated complaint is to be served on counsel or
5 through our electronic means.

6 MS. McEVOY: Your Honor, Mr. Kohn was gracious
7 enough to offer a translation of the direct purchaser
8 complaint. Is that something that the other parties would be
9 willing to stipulate to as well?

10 MR. KOHN: Of course.

11 THE COURT: I think that they would be.

12 MR. PERSKY: Yes.

13 THE COURT: I don't mean to speak for you but, yes,
14 I mean, it is not difficult in today's world to get a
15 Japanese translation.

16 MS. SALZMAN: Yes, Your Honor we will do that for
17 the end-payors.

18 THE COURT: Okay. All right. So that's taken care
19 of service. Are there --

20 MS. McEVOY: Forgive me, Your Honor, I'm reminded
21 by my colleagues that there are some German defendants as
22 well.

23 MR. TUBACH: Your Honor, Michael Tubach for Leoni.
24 I can speak on behalf of Leoni. We will not be insisting on
25 service or translation.

1 THE COURT: All right. Thank you. And you can
2 take care of that later, you know, if you don't need
3 translations you can just indicate that you don't need
4 translations. We would hate to give you one in Japanese and
5 then you would have to translate it back to English to
6 understand it, I don't know.

7 MR. FANELLI: Your Honor, Michael Fanelli on behalf
8 of S-Y Systems Europe. I would need to consult my clients on
9 the translation issue.

10 THE COURT: Okay. All right. Anybody who wants a
11 Japanese version will get it. In fact, maybe you will get
12 both versions and if you don't want the Japanese you can just
13 discard it.

14 MR. FANELLI: Just to clarify, it is a German
15 company.

16 THE COURT: German. Okay. Do we understand that?

17 MS. McEVOY: Yes, Your Honor.

18 THE COURT: Let's talk about timing though.

19 MS. McEVOY: Yes.

20 THE COURT: Let's hear what plaintiffs have to say
21 in response to your issue on timing.

22 MR. SPECTOR: Your Honor, Eugene Spector on behalf
23 of direct purchase plaintiffs.

24 We did negotiate a time frame for the filing of an
25 amended -- consolidated amended complaint, for the filing of

1 responsive pleadings to that complaint, and a briefing
2 schedule; that was the 45, 60 and 60. The issue we have had
3 is that additional 60 for the additional Rule 4 service. We
4 think that just delays the matter far too long and that we
5 can move it along much more quickly, certainly most easily if
6 counsel will accept service, that makes it easy, and then we
7 have a date certain by which we can start with everybody, but
8 the issues are going to be the same in all of this, we think
9 that we can get started and move this case along more quickly
10 by getting our consolidated amended complaint on behalf of
11 wire harnesses' clients, I think that's an underlying
12 assumption.

13 THE COURT: Wait. We are only talking about this
14 MDL wire harness.

15 MR. SPECTOR: Absolutely.

16 THE COURT: We do have a question because one of
17 the cases here has been amended already to include the other
18 parts.

19 MR. PERSKY: There are two end-payor cases where
20 the complaints have been amended to pick up other products.
21 Since we have been appointed as interim end-payor lead
22 counsel, our consolidated amended complaint will not pick up
23 on that thought and will stick just to wire harnesses, Your
24 Honor.

25 THE COURT: And so those are going to be dropped

1 for now?

2 MR. PERSKY: Those are additional claims.

3 THE COURT: They will go into the other MDLs?

4 MR. PERSKY: Perhaps.

5 THE COURT: Oh, good. Okay. That takes care of
6 that problem. See, we don't have problems.

7 MR. SPECTOR: Not a problem there, your Honor.

8 THE COURT: All right. So we'll have the
9 consolidated complaint strictly with the wire harness cases,
10 that's all.

11 MR. SPECTOR: Yes.

12 THE COURT: That's all, the MDL 2311, there will be
13 consolidated complaints for each of the classes that will be
14 filed when?

15 MR. SPECTOR: We proposed 45 days from the entry of
16 the case management order in this case, Your Honor. That's
17 the negotiated schedule, we are willing to work with it.

18 THE COURT: Within the 45 days.

19 MR. SPECTOR: Within the 45 days.

20 THE COURT: What's the next date?

21 MR. SPECTOR: The next date as far as we are
22 concerned would be 60 days later, we believe, in order for
23 the defendants to be able to file their responsive pleadings,
24 and we are assuming that it will be motions to dismiss.

25 THE COURT: Okay. Now, wait a minute.

1 MR. SPECTOR: But maybe we will get an answer.

2 THE COURT: Wait a second. You are talking about
3 your filing because all of the defendants have been served?

4 MR. SPECTOR: Correct.

5 THE COURT: What about foreign defendants, do we
6 still have that issue with some of the defendants?

7 MR. SPECTOR: We still have that issue, Your Honor.
8 Again, as Mr. Kohn requested, if these foreign defendants,
9 who really are represented here through their American
10 subsidiaries and their counsel, will accept service of those
11 complaints that makes it easy, we will translate them if they
12 want them in Japanese although it strikes me as rather
13 strange for a company for example like Yazaki that pled
14 guilty in a courtroom in this building not so long ago with
15 regard to these matters is now asking for a Japanese
16 complaint, but --

17 THE COURT: Minor problem.

18 MR. SPECTOR: Minor problem, Your Honor.

19 THE COURT: But what about -- and I guess we will
20 hear from the defendants whether or not counsel will accept
21 service, but for those who have already been served then
22 you're saying 60 days to respond --

23 MR. SPECTOR: Yes, Your Honor.

24 THE COURT: -- either by motion or answer?

25 MR. SPECTOR: Yes, Your Honor, and then we would --

1 since we expect to receive multiple motions, that's why we
2 asked for the 60 days to respond to those motions. If we
3 weren't going to get multiple motions, Your Honor, we could
4 do it in less time than that.

5 THE COURT: All right. Thank you.

6 MR. SPECTOR: Thank you.

7 THE COURT: Let me hear from the defendants or
8 Ms. McEvoy regarding acceptance of service for the foreign
9 companies, if that's a possibility what needs to be worked
10 out to make it happen, and if not then I guess we go the
11 route of the Hague or whatever.

12 MS. McEVOY: Your Honor, I think I will have to
13 defer to some of my co-counsel --

14 THE COURT: All right.

15 MS. McEVOY: -- because that is not going to be an
16 issue for my client so I'm not in a position to speak to it.

17 THE COURT: All right. Who wants to speak?

18 MS. McEVOY: And, Your Honor, I say that on the
19 understanding because I think there is maybe still a little
20 ambiguity that you have ordered that service of the amended
21 complaint is effective upon service of counsel, correct?

22 THE COURT: Correct.

23 MS. McEVOY: As to those defendants who have
24 already been served with the complaint?

25 THE COURT: With the complaint.

1 MS. McEVOY: Okay. Thank you.

2 THE COURT: Yes.

3 MR. GANGNES: Your Honor, good afternoon. I'm
4 Larry Gangnes from the Lane Powell firm in Seattle.

5 THE COURT: How do you spell your last name?

6 MR. GANGNES: It is G-A-N-G-N-E-S.

7 THE COURT: Thank you.

8 MR. GANGNES: We represent Furukawa Electric and
9 American Furukawa. We have already agreed to accept service
10 in a couple of the underlying cases, and we will work with
11 plaintiffs' counsel to resolve service on the other cases.

12 THE COURT: Thank you, Counsel.

13 MS. SULLIVAN: Good morning, Your Honor.
14 Marguerite Sullivan from Latham Watkins on behalf of Sumitomo
15 Electric Industries, Limited and the other Sumitomo entities.

16 We are in the same position as Furukawa, we have
17 agreed to accept service.

18 THE COURT: Thank you, Counsel.

19 MR. SANKBEIL: William Sankbeil of Kerr, Russell
20 and Weber.

21 Your Honor, we represent Fujikura America.
22 Fujikura Limited is the Japanese parent. We do not have
23 authority at this point to accept service, but my
24 understanding from what Mr. Kohn said is service is underway
25 on the foreign defendants and I know they have had months to

1 serve -- at least many of the plaintiffs have had months to
2 serve and effectuate foreign service, so I assume that the
3 Japanese parent will be getting served soon, but as far as
4 authority today, no, we do not have authority today.

5 THE COURT: Thank you.

6 MR. PERSKY: Excuse me. In the Beck case didn't
7 Fujikura waive service and join the Beck stipulation?

8 MR. SANKBEIL: I don't know.

9 MR. PERSKY: Okay. We will have to check.

10 THE COURT: You will talk about that though and see
11 if you can work that out.

12 MR. FANELLI: Your Honor, I'm Michael Fanelli from
13 the law firm of Covington and Burling, and we represent
14 S-Y Systems Technologies Europe, an entity which does not
15 have any U.S. presence whatsoever.

16 We have not until perhaps this week received
17 service in any of the cases. Just last night I received some
18 documents purporting to serve our client under the Hague in
19 Europe, and so we are looking at those now to determine
20 whether service has been properly effected but otherwise I
21 have not been given authority from my client to waive
22 service.

23 THE COURT: All right.

24 MR. TUBACH: Good afternoon, Your Honor. Michael
25 Tubach from O'Melveny & Myers for the Leoni entities.

1 We will not be insisting on service of any of the
2 consolidated amended complaints on the German entities. I
3 would like to have a discussion with plaintiffs' counsel
4 about whether they have served the right entities in German
5 but we can have that discussion separately.

6 THE COURT: All right.

7 MR. CHERRY: Your Honor, I'm Steve Cherry of Wilmer
8 Hale. We represent Denso International America.

9 Our Japanese parent, it is our position, has not
10 been served by anyone. The closest we have come, I think one
11 of the complaints from maybe an indirect, somebody mailed a
12 complaint, made no effort to comply with the Hague at all,
13 and that's the closest, but our position is we haven't been
14 served at all and we should be served. I don't have
15 authority to accept service.

16 THE COURT: Okay.

17 MR. PERSKY: Hague service on Denso, the Japanese
18 Denso company is in process right now.

19 THE COURT: All right.

20 MR. GALLO: Ken Gallo, Your Honor, from Paul, Weiss
21 for the Delphi entities.

22 We had previously agreed to accept service on
23 behalf of the Delphi entities and stand by that. To the
24 extent that the consolidated amended complaint names a
25 non-U.S. Delphi entity, there may be a personal jurisdiction

1 issue but we are not going to argue about service.

2 Mr. Persky I think misspoke when he sort of -- just
3 for the record I want to be sure, there is a difference
4 between service and personal jurisdiction, but other than
5 that we have agreed to accept service a long time ago.

6 MR. PERSKY: All I said though is that we have
7 served and either we have gotten personal jurisdiction or we
8 haven't. If there is insufficient nexus or if service is
9 improper that defense is preserved.

10 THE COURT: Will be raised.

11 MR. GALLO: I think we agree.

12 MR. DONNINI: Good afternoon, Your Honor.

13 George Donnini from Butzel Long on behalf of Tokai Rika
14 America.

15 To my knowledge there has been no service on the
16 Japanese company Tokai Rika Japan, and I'm not in a
17 position -- I'm not authorized at this point to accept
18 service.

19 I would have one clarification. You said with
20 respect to your earlier ruling service of the complaint -- an
21 underlying complaint would be effective service and thus the
22 consolidated amended complaint can go through ECF or on
23 counsel. Is that with respect to at least one complaint per
24 class so direct, indirect, indirect, or is that just any one
25 complaint?

1 THE COURT: Any one complaint per class would do
2 it.

3 MR. MAROVITZ: Your Honor, Andy Marovitz from
4 Mayer Brown for Lear Corporation here in Michigan. The
5 plaintiffs --

6 THE COURT: We have service on you.

7 MR. MAROVITZ: The plaintiffs can send me their
8 amended consolidated complaints and that would be fine for
9 us.

10 THE COURT: Thank you.

11 MR. MAROVITZ: Thank you. In English.

12 MR. WILLIAMS: Your Honor, my name is
13 Steve Williams of Cotchett, Pitre & McCarthy for the indirect
14 purchasers.

15 I just want to bring one authority to the Court's
16 attention because this situation comes up before. Service is
17 important but also managing the case efficiently is
18 important. In the CRT case Judge Conti in California, it is
19 2008 Westlaw 4104341, under Rule 403, in this exact situation
20 where you had a foreign parent, a domestic subsidiary has
21 been served, represented by counsel, under that rule
22 permitted service through the American counsel and the
23 American subsidiary. It has been applied repeatedly in the
24 Southern District, in this Circuit and in the Northern
25 District, and it helps put everyone on that same timetable.

1 THE COURT: So you're saying we don't need to serve
2 the foreign parents?

3 MR. WILLIAMS: In this circumstance the Court has
4 the authority under Rule 4(f)(3) to order that service on the
5 American subsidiary and their counsel is effective service
6 that complies with due process.

7 THE COURT: Okay. That may be but I'm not going to
8 exercise that authority. I think they have the right to
9 serve -- I mean, to be served. I would hope you would,
10 Defendants, talk to your foreign parents and see if you can't
11 get permission. I mean, it may be we are doing an exercise
12 in futility here, I don't know, but I do agree that they have
13 the right to be served. So if you can waive it, that would
14 be wonderful; if not, you will serve. You know how to serve,
15 and we will get it done.

16 Okay. So does that take care of the time frame and
17 the service in the case management order?

18 MS. McEVOY: I believe so, Your Honor, and I'm sure
19 my colleagues will tell me if they disagree, but I think that
20 effectively means one response date 60 days after the filing
21 of the consolidated amended complaint as to those defendants
22 who have previously been served, and then a series of
23 separate dates as the previously unserved defendants may be
24 served in accordance with Rule 4?

25 THE COURT: I don't think I understood that.

1 MR. SPECTOR: Your Honor, hopefully since the
2 process is underway -- this is Eugene Spector on behalf of
3 the direct purchasers.

4 Hopefully since the process is underway we may very
5 well be able to effectuate service of the original complaints
6 on these foreign defendants that haven't been served. As
7 Mr. Fanelli just reported, he received word I believe you
8 said that your client has been served under the
9 Hague Convention.

10 MR. FANELLI: I said that my client may have been
11 served.

12 MR. SPECTOR: May have been served under the
13 Hague Convention.

14 THE COURT: That might take care of --

15 MR. SPECTOR: This 45 days before we file our
16 consolidated amended complaint may obviate that problem
17 entirely.

18 THE COURT: Right, right, hopefully.

19 MS. McEVOY: Hopefully that is the case, but there
20 may end up being separate response dates as a result of
21 lagging service issues.

22 THE COURT: It may be but hopefully not, hopefully
23 that 45 days is sufficient.

24 MR. MAROVITZ: Judge, Andy Marovitz again.

25 From the defendants' perspective it is very

1 important to us that the 60 days for us starts on the same
2 date. For instance, for Lear Corporation we believe we have
3 a meritorious bankruptcy argument. That argument is likely
4 going to be the same as applied to the directs, to the
5 end-payors and to the dealers. Now, there may be differences
6 for each of those but it would be I think incredibly
7 inefficient if we had to file at different times those motion
8 papers in response to the three.

9 So our proposal is that whatever our 60 days runs
10 from that it run from some uniform date, not necessarily when
11 it is that the plaintiffs -- when each set of plaintiffs
12 files its individual papers.

13 THE COURT: Okay.

14 MR. KOHN: Your Honor, I think all plaintiffs would
15 propose that we would file on or about the 45th date and they
16 could have from the 45th day to start their 60 days.

17 MR. MAROVITZ: Great.

18 THE COURT: When you do your final case management
19 order, which I'm going to turn back to you to work on, put
20 that in there specifically so that they know. I do agree it
21 would be -- it would be hard to have the different dates, so
22 thank you. I understand why you want that exact date, and we
23 will arrange for that so however the wording in that order
24 make sure it provides for that.

25 All right. On my agenda for the complaints I

1 included short-form master because those terms are used in
2 some of the agendas included but I think we have taken care
3 of it with the amended consolidated complaint, so we can move
4 on.

5 And also my next item had to do with how to handle
6 the complaint with the other parts, and that also has been
7 resolved so we are done with that.

8 Service we did.

9 Okay. I had an issue on ECF service list
10 corrections. There were some errors and some addresses being
11 changed or something. I just want to make sure -- we do have
12 your cards now so we will go through and try to correct. If
13 we have a question my clerk might call you in terms of saying
14 is this the right address or why do we have a different
15 address here, but I want to make sure that service list and
16 everybody's appearances are correct in terms of address.

17 Now, the other issues, and this is in the case
18 management order that we -- that was proposed, but I did talk
19 about protective orders and preservation orders and I think,
20 Ms. McEvoy, you had all of those things in there that you
21 would work on.

22 The next thing is the motion practice, and I don't
23 think we need to really go into that. We had motions for
24 consolidation. I don't hear any objections. I think all of
25 the classes should be consolidated, and we'll have the

1 consolidated amended complaints, so those motions that are
2 pending will be granted, and you may submit orders if you
3 have filed a motion to consolidate.

4 I don't think we have any other pending motions.
5 Does anybody --

6 MR. KOHN: None from the plaintiffs.

7 THE COURT: None from the plaintiffs. Any
8 defendants?

9 (No response.)

10 THE COURT: Okay. That takes care of the motions.
11 Okay. The case management order then will be finalized. I
12 would hope you could get together, put these dates in it and
13 finalize the language and submit it to me within this next
14 week. All right.

15 MR. FINK: Your Honor, may I suggest that rather
16 than file separate orders for consolidation, since we are
17 going to be filing the case management order anyway why don't
18 we include consolidation in the case management?

19 THE COURT: I think that's an excellent idea.

20 MR. FINK: Thank you.

21 THE COURT: See, liaison, very good.

22 MR. FINK: Yay. Thank you, Your Honor.

23 THE COURT: Okay. The other thing is
24 court-sponsored website. I haven't put together any website
25 yet.

1 MR. SPECTOR: Your Honor, if I might,
2 Eugene Spector.

3 With regard to website, that sometimes happens in
4 some of the mass tort cases that we have been talking about
5 before. Here in this case once class certification is
6 reached and notice has to go to the class, we will have a
7 website. We'll have a site for this case that the class will
8 be able to go to see any documents that are necessary and
9 keep up to date with the class with the case, but until that
10 time there is no need for anything like a website.

11 THE COURT: Good. I was glad you are not sending
12 me back to IT school or something like that. I did work for
13 IBM so you know I could do this. Go ahead.

14 MS. McEVOY: Your Honor, needless to say, I do not
15 share the same optimism that a class should or ought to be
16 certified here and therefore notice ought to issue, but I do
17 agree that there is not a need at this point in time for a
18 court-sponsored website.

19 THE COURT: Thank you. All right. Things right
20 now, as you all know, will be filed under the MDL number
21 here. Thinking ahead, if we get to the point that we have
22 other MDLs and this is something that we certainly won't know
23 here until at least the end of May, June sometime, then I'm
24 going to think ahead about some master number that would
25 include all of the MDLs. I have already, just in case,

1 checked that we might use an MDL 000 or some good number so
2 that it would apply -- whatever goes on there would apply to
3 all MDLs, but that's something that we will deal with in the
4 future.

5 MR. STRANGE: Your Honor?

6 THE COURT: Yes.

7 MR. STRANGE: Brian Strange. With respect to those
8 other MDLs I assume that Your Honor will address the
9 leadership issue of those if and when they are transferred?

10 THE COURT: Absolutely. This does not apply to the
11 leadership of the other MDLs. I don't know the relationship.
12 I'm just going to wait until I get it.

13 MR. STRANGE: Thank you.

14 THE COURT: Nobody is barred here or people here
15 who are lead counsel should not think they would
16 automatically be lead counsel in the other MDLs. I don't
17 know yet, I haven't looked at those, I don't know who filed,
18 I think you might all be the same, I don't know. Okay. All
19 right. And anything else, anybody have any other --

20 MR. KOHN: Your Honor, I noted on your Court's
21 agenda there was one other item of status conference
22 schedule.

23 THE COURT: Yes.

24 MR. KOHN: There is that provision in the draft
25 case management order for a 60-day period for us to confer on

1 discovery matters, so maybe some time after that date.

2 THE COURT: I was thinking in terms of the status
3 conference, the next status conference for this case it might
4 be good since this is March, April, May, I'm thinking we
5 should wait and see if we have the resolution on the MDLs,
6 the other MDLs, because I would like to talk to all of you
7 once I have that. I don't even know yet what the issues -- I
8 haven't defined them, but I know I'm going to want to talk to
9 you once I have -- if I have -- if I have the other MDLs.
10 Okay. So in terms of the next conference why don't you
11 coordinate a date. It is my experience it takes them a
12 couple of weeks. You may have different experiences because
13 you have done more of these MDLs so you might be better able
14 to coordinate a date, and if you contact my staff we will
15 work out a date that we can plan and hopefully keep that date
16 and have the resolution of the other cases. Okay. Thank you
17 for bringing that up.

18 Any other issues?

19 (No response.)

20 THE COURT: No other issues. All right. Thank you
21 very much for coming in. I appreciate it. I look forward to
22 working with all of you. Thank you.

23 (Proceedings concluded at 12:58 p.m.)

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CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of IN RE: AUTOMOTIVE WIRE HARNESS SYSTEMS ANTITRUST LITIGATION Case No. 12-mdl-2311, on Friday, March 16, 2012.

s/Robert L. Smith

Robert L. Smith, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 03/26/2012

Detroit, Michigan